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JOINT APPENDIX

Volume I, Pages 1-341

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1933

UNITED STATES OF AMERICA,
Appellant,

v.

CITIZENS AND SOUTHERN NATIONAL BANK, et al.

On Appeal from the United States District Court for the Northern District of Georgia

JURISDICTIONAL STATEMENT FILED JUNE 24, 1974

PROBABLE JURISDICTION NOTED OCTOBER 21, 1974

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JOINT APPENDIX

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
RELEVANT DOCKET ENTRIES

Date	Filings
1971	
Nov. 2	Complaint filed. Summons issued and delivered to U.S. Marshal.
1972	
Jan. 4	Order filed that parties may file with the Clk. certain affidavits in support of and in response to the Motion to Lift the Stay, etc. (see order) Counsel shall mark documents as "Confidential Information" and the Clerk shall know that they are documents not to be maintained in the public records of this Ct., Directing Clk. to maintain them under seal to be made available only to the Ct. and Ct. personnel, and to counsel in this case, until further ordered (see order for details). Copy to counsel.
Jan. 6	Defendants' memorandum in support of motion to lift the statutory stay, with attachments, filed. Sealed in Vault.
Jan. 20	Case Reassigned to Judge Moye.
Feb. 2	Submitted on Defendants' Motion to Lift Statutory Stay and Defendants' Motion for Protective Order (Filed 12/30/71)
Feb. 10	Affidavits of William B. Camp, Joseph A. Hall, III, W. M. Jackson and Angus Parker. Sealed in Vault.

Feb. 11 Hearing on Defendants' Motion to Lift Stay Had: The Court took the motion under advisement, ruling not to be made for 10 days. Motion of defendants to dismiss and to strike allegations that defendants have violated Section 1 of the Sherman Act filed. To CAM.

Brief in support of defendants' motions to strike and to dismiss filed. To CAM.

Mar. 3 Order filed Denying defendants' motion to lift the statutory stay. Copy to Counsel.

Mar. 17 Plaintiff's brief in opposition to defendants' motion to dismiss and to strike allegations etc., filed.

Mar. 20 Submitted to CAM on Defendants' Motion to Dismiss and to Strike.

Mar. 22 Supplement to Plaintiff's brief in opposition to defendants' motion to dismiss and to strike, with Exhs. 1 and 2, filed. To CAM.

Apr. 10 Plaintiff's memorandum in response to defendants' reply brief in support of their motion to dismiss filed. To CAM.

Apr. 20 Order pursuant to Rule 12(a) of F.R.C.P., the court postpones until the trial on the merits the disposition of defendants' motion to dismiss and strike allegations that defendants have violated Sec. 1 of the Sherman Act served and filed 2/11/72, filed. (c. to counsel)

May 5 Answer of defendants filed.

May 8 Consent Protective Order that "that portion of the FDIC Summary of Deposits 1970 Bank and Branch Offices by County, State," which relates to deposits

held by branch offices in Atlanta Standard Metropolitan Statistical Areas, shall be used by defendants solely to prepare for and at trial of this case and any appeals thereof, and for no other purpose filed. Copy to counsel.

June 16 Protective Order Re: Answer to Interrogatories and other documents filed. Copies to counsel.

July 13 Defendant's Fulton National Bank of Atlanta, motion for protective order and Order granting same. Clerk of this Court shall maintain under seal all information which is designated by the Movant Bank as Confidential Information; all documents or materials furnished by The Movant Bank shall be promptly returned to the Movant Bank at the conclusion of this proceeding, filed. (Copies furn.)

Defendant's, The Trust Co. of Georgia, motion for protective order and Order granting same, Clerk of this Ct. shall maintain under seal all information which is designated by the Movant Bank as Confidential Information; all documents or materials furnished by the Movant Bank shall be promptly returned to the Movant Bank at the conclusion of this proceeding, filed. (Copies furn.)

Defendant's, First National Bank of Atlanta & The Peachtree Bank and Trust Co. motions for protective orders and Orders granting same, Clerk of this Ct. shall maintain under seal all information which is designated by the Movant Banks as Confidential Information; all documents or materials furnished by the Movant Banks shall be promptly returned to the Movant Banks at the conclusion of this proceeding, filed. (Copies furn.)

July 21 Defendant's, National Bank of Ga. & Robert P. Guyton, withdrawal of their motion to quash sub-

poena & for protective order filed 6/26/72, filed. Defendant's National Bank of Ga. & Robert P. Guyton, motion for protective order and Order granting same, Clerk of this Ct. shall maintain under seal all information which is designated by the Movants as Confidential Information; all documents or materials furnished by the Movants shall be promptly returned to the Movants at the conclusion of this proceeding, filed. (Copies furn.)

Aug. 8 Depositions of Dalton F. Scott, Gerald M. Powell, Frank Berry & Alva G. Maxwell filed.

Aug. 10 Deposition of Edward E. Elson filed.

Aug. 18 Deposition of Dr. W. Andrew Irvin filed.

Aug. 25 Deposition of Churchill P. Goree, III filed.

Sept. 5 Deposition of James H. Aldredge filed.

Sept. 7 Deposition of Hugh F. Lane filed.

Sept. 11 Deposition of Thomas E. Cook filed.

Sept. 19 Deposition of Louis J. Fortuna filed.

Deposition of Hubert L. Harris filed.

Sept. 21 Deposition of W. J. Fortenberry filed.

Deposition of Dr. William M. Cason filed.

Deposition of Archie Lee Lindsey filed.

Deposition of Gus Lockett Connelly filed.

Deposition of Marcus M. Morris filed.

Deposition of Warren Lanham Berry filed.

Defendants' pre-trial brief, with Appendix, filed.

Plaintiff's pre-trial brief filed.

Sept. 25 Plaintiff's Objections to the Admission into evidence of certain documents offered by defendants and plaintiff's understanding of certain agreements with defense counsel filed.

Non-Jury Trial: Defendants' withdrawal of notice to take deposition filed; Defendants' objection to government exhibits filed; Exhibits admitted.

Deposition of T. Robert Hazelrig filed.

Sept. 26 Non-Jury Trial:

Sept. 27 Non-Jury Trial: Exhibits admitted.

Sept. 28 Non-Jury Trial:

Sept. 29 Non-Jury Trial:

Oct. 2 Non-Jury Trial: Case proceeded upon introduction of evidence by the defendants' witnesses. Exhibits Admitted. Court directed that briefs be filed as follows: Plaintiff's Preliminary Brief due 11-6-72; Defendant's Preliminary & Rebuttal Brief due 11-22-72; Plaintiff's Rebuttal Brief due 11-30-72; Both Parties Proposed Findings of Fact & Conclusions of Law due 12-15-72. Case taken under advisement by Court.

Oct. 4 Steno-type notes of trial proceedings filed.

Oct. 13 Deposition of Morris B. Pierce filed.

Nov. 7 Plaintiff's post-trial brief filed.

Nov. 22 Defendant's post-trial brief filed.

Nov. 30 Plaintiff's Reply to defendant's post trial brief filed.

Dec. 5 Defendants' response to plaintiff's reply brief filed.

Dec. 15 Plaintiff's proposed findings of fact and conclusions of law filed. Duplicate to CAM by counsel.

Defendants' findings of fact & conclusions of law filed. Duplicate to CAM.

Dec. 18 Submitted Pursuant to Entry of 10/2/72.

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Jan. 25 Order filed directing parties to advise the Court of their specific objections to the findings of fact made by the opposing party by 2/15/73. Copy to counsel.

Feb. 15 Defendants' objections to plaintiff's proposed findings of fact filed. Dup to CAM.

Feb. 16 Plaintiff's objections to defendants' proposed findings of fact filed. Dup CAM.

Submitted Pursuant to Order of 1/25/73.

Mar. 16 Motion of Independent Bankers Association of Georgia, Inc. to file brief amicus curiae, with amicus curiae brief & attachments filed. To CAM.

Mar. 23 Reply of defendants to Amicus Curiae brief on behalf of the Independent Bankers Association of Georgia, Inc. filed. Dup. to CAM.

Apr. 4 Submitted on Motion of Independent Bankers Association of Georgia, Inc. to file Brief Amicus Curiae.

May 9 Defendants' letter brief with attachment filed (Dup to CAM)

June 12 Order that motion of the Independent Bankers Association of Ga., Inc. to file a brief amicus curiae is hereby granted, filed. (c. counsel)

Amicus Curiae Brief on Behalf of Independent Bankers Association of Ga., Inc., filed.

June 15 Supplement to Amicus Curiae Brief on behalf of Independent Bankers Association of Georgia, Inc., filed. Dup. to CAM.

July 12 Defendants' tender of supplemental evidence, filed. Copy sent to Amicus Curiae. Dup. to CAM.

July 25 Second supplement to amicus curiae brief on behalf of Independent Bankers Association of Ga., Inc., filed. Dup. to CAM.

Aug. 1 Affidavit of Joseph A. Hall, III, filed. Dup. to CAM. Defendants' supplemental findings of fact & conclusion of law, filed. Dup. to CAM.

Aug. 27 Third Supplement to Amicus Curiae Brief on behalf of Independent Bankers Assoc. of Ga., Inc. filed (Dup to CAM)

Plaintiff's Response to supplemental findings of fact proposed by defendants filed. (1 Dup. to CAM.)

Nov. 16 Defendants' memorandum regarding effect of the Citizens & Southern National Bank, et al. v. Independent Bankers Association of Ga. (Supreme Court of Georgia, November 15, 1973, with attachments filed. Dup. to CAM.

Nov. 21 Fourth supplement to amicus curiae brief on behalf of Independent Bankers Association of Ga., Inc. filed. Dup. to CAM.

Dec. 4 Plaintiff's reply to defendants' memorandum regarding effect of the C&S Bank, et al. v. Independent Bankers Assoc., filed.

1974

Jan. 25 Order finding for the defendant & against the plaintiffs, the statutory stay in effect against the effectua-

tion of the proposed mergers shall expire upon the Govt's. failure to appeal from this Order within time permitted by law; otherwise the proposed mergers shall not be effectuated until the completion of any appeal taken by the Govt., filed. C. counsel.

Judgment filed and entered finding for the defendants & against the plaintiff; that the defendants Citizens and Southern National Bank, Citizens and Southern Holding Company, Citizens and Southern Emory Bank, Citizens and Southern Bank of East Point, Citizens and Southern Bank of Chamblee, Citizens and Southern Park National Bank, Citizens and Southern South DeKalb Bank, Citizens and Southern Bank of Tucker, Citizens and Southern Bank of North Fulton and Citizens and Southern Bank of Sandy Springs recover of the plaintiff United States of America their costs of action. C. counsel.

Feb. 22 Defendants' Bill of Costs in the amount of $4,-709.72 filed. (Counsel notified 2/25)

Mar. 8 Plaintiff's letter in regard to agreement with defendant as to taxation of cost filed.

Mar. 25 Plaintiff's Notice of Appeal filed. (copy to counsel & USSC w/docket sheet)

June 5 Order that the Court amends *nunc pro tunc* its "Findings of Fact, Conclusions of Law and Order" dated 1/25/74 as follows (see order), filed. (c. counsel)

June 24 Defendants' motion to lift stay, with memorandum in support of second motion to lift the statutory stay filed.

June 25 Order denying defendants' motion to vacate stay, filed. (copies furnished)

Oct. 29 Certified Copy of Order from Supreme Court noting probable jurisdiction filed. (Copy Counsel 10/30)

Nov. 18 Record on Appeal to USSC, RRR. (6 boxes) (ACK transmittal letter).

United States District Court
For the Northern District of Georgia
Atlanta Division

United States of America, Plaintiff,

v.

Citizens and Southern National Bank, Citizens and Southern Holding Company, Citizens and Southern Emory Bank, Citizens and Southern Bank of East Point, Citizens and Southern Bank of Chamblee, Citizens and Southern Park National Bank, Citizens and Southern South DeKalb Bank, Citizens and Southern Bank of Tucker, Citizens and Southern Bank of North Fulton, and Citizens and Southern Bank of Sandy Springs, Defendants.

Civil Action
No. 15823

COMPLAINT

(Filed November 2, 1971)

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United

States, brings this civil action to obtain equitable relief against the above named defendants, and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. Section 25), commonly known as the Clayton Act, and under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. Section 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18) and of Section 1 of the Sherman Act (15 U.S.C. Section 1).

2. Each of the defendants transacts business and is found within the Northern District of Georgia.

II

The Defendants

3. Citizens and Southern National Bank (hereinafter referred to as "C&S National") is made a defendant herein. C&S National is a banking association organized and existing under the laws of the United States of America. C&S National has its home office in Savannah, Georgia and its principal executive office in Atlanta, Georgia.

4. Citizens and Southern Holding Company (hereinafter referred to as "C&S Holding") is made a defendant herein. C&S Holding is a registered bank holding company organized and existing under the laws of the State of Georgia. C&S Holding

has its home office in Atlanta, Georgia. C&S Holding is a wholly-owned subsidiary of C&S National.

5. Citizens and Southern Emory Bank (hereinafter referred to as "C&S Emory") is made a defendant herein. C&S Emory is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in DeKalb County, Georgia. C&S Holding owns approximately 95 percent of the stock of C&S Emory.

6. Citizens and Southern Bank of East Point (hereinafter referred to as "C&S East Point") is made a defendant herein. C&S East Point is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in Fulton County, Georgia. C&S Holding owns approximately 90 percent of the stock of C&S East Point.

7. Citizens and Southern Bank of Chamblee (hereinafter referred to as "C&S Chamblee") is made a defendant herein. C&S Chamblee is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in DeKalb County, Georgia. C&S Holding owns 5 percent of the stock of C&S Chamblee.

8. Citizens and Southern Park National Bank (hereinafter referred to as "C&S Park National") is made a defendant herein. C&S Park National is a banking association organized and existing under the laws of the United States of America, and has its principal place of business in DeKalb County, Georgia. C&S Holding owns 5 percent of the stock of C&S Park National.

9. Citizens and Southern South DeKalb Bank (hereinafter referred to as "C&S South DeKalb") is made a defendant herein. C&S South DeKalb is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in DeKalb County, Georgia. C&S Holding owns 5 percent of the stock of C&S South DeKalb.

10. Citizens and Southern Bank of Tucker (hereinafter referred to as "C&S Tucker") is made a defendant herein. C&S Tucker is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in DeKalb County, Georgia. C&S Holding owns 5 percent of the stock of C&S Tucker.

11. Citizens and Southern Bank of North Fulton (hereinafter referred to as "C&S North Fulton") is made a defendant herein. C&S North Fulton is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in Fulton County, Georgia. C&S Holding owns 5 percent of the stock of C&S North Fulton.

12. Citizens and Southern Bank of Sandy Springs (hereinafter referred to as "C&S Sandy Springs") is a banking association organized and existing under the laws of the State of Georgia, and has its principal place of business in Fulton County, Georgia. C&S Holding owns 5 percent of the stock of C&S Sandy Springs.

13. Various persons not made defendants herein have combined with the defendants in violations hereinafter alleged, and have performed acts and otherwise contributed to the furtherance thereof.

III

Definitions

14. As used in this complaint, the term "Atlanta Area" means the area comprising DeKalb and Fulton Counties, Georgia.

15. As used in this complaint, the term "North Fulton County" means that part of Fulton County situated north of the Atlanta city limits.

16. As used in this complaint, the term "C&S System" means the combination of C&S National, C&S Holding, C&S Emory, Citizens and Southern DeKalb Bank and C&S East Point.

IV

Trade and Commerce

17. Commercial banks fill an essential and unique role in the Nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by checks, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrator of the Nation's check payment system. Through the making of loans to individuals and business firms, commercial banks supply a significant part of the credit requirements of the Nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills, and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

18. C&S National is the largest banking organization providing commercial banking services in the Atlanta Area. It operates at least thirty banking offices in Fulton County and one

banking office in DeKalb County. As of December 31, 1970, it had total assets of $1.7 billion, total deposits of $1.4 billion, and net loans and discounts of $1.1 billion. As of June 30, 1970, its offices in Fulton County had total deposits of about $706 million, accounting for approximately 27 percent of total county deposits. Also, as of the same date, its office in DeKalb County had total deposits of about $13 million, accounting for approximately 4.4 percent of total county deposits. C&S National, through its wholly-owned subsidiary C&S Holding, controls about 94 percent of the stock of Citizens and Southern DeKalb Bank (hereinafter referred to as "C&S DeKalb") which operates two offices in DeKalb County. As of June 30, 1970, C&S DeKalb had total deposits of about $23 million, accounting for approximately 8 percent of total county deposits.

19. C&S Emory operates three banking offices in DeKalb County. As of December 31, 1970, it had total assets of $42.3 million, total deposits of $35.4 million, and net loans and discounts of $28.5 million. As of June 30, 1970, its total deposits accounted for approximately 13 percent of total DeKalb County deposits.

20. Combined, C&S National, C&S DeKalb, and C&S Emory represent the largest banking organization in DeKalb County. As of June 30, 1970, their combined deposits of about $73 million accounted for approximately 25 percent of total DeKalb County deposits.

21. C&S Chamblee operates two banking offices in DeKalb County. As of December 31, 1970, it had total assets of $21.1 million, total deposits of $18.7 million, and net loans and discounts of $10.7 million. As of June 30, 1970, its deposits accounted for approximately 6 percent of total DeKalb County deposits.

22. C&S Park National operates a single banking office in DeKalb County. As of December 31, 1970, it had total assets

of $11.1 million, total deposits of $9.8 million, and net loans and discounts of $3.5 million. As of June 30, 1970, its deposits accounted for approximately 3 percent of total DeKalb County deposits.

23. C&S South DeKalb operates a single banking office in DeKalb County. As of December 31, 1970, it had total assets of $5.1 million, total deposits of $4.3 million, and net loans and discounts of $2.1 million. As of June 30, 1970, its deposits accounted for about 1 percent of total DeKalb County deposits.

24. C&S Tucker operates two banking offices in DeKalb County. As of December 31, 1970, it had total assets of $26.5 million, total deposits of $23 million, and net loans and discounts of $14.8 million. As of June 30, 1971, its deposits accounted for about 7 percent of total DeKalb County deposits.

25. The predominant share of the business banking offices in DeKalb County receive is derived from DeKalb County. DeKalb County is a concentrated banking market. As of June 30, 1970, the four largest banking organizations in DeKalb County held over 65 percent of total county deposits. If C&S Chamblee, C&S Park National, and C&S South DeKalb were merged into the C&S System, it would account for 35 percent of total county deposits, and the four largest banking organizations would account for about 75 percent of total county deposits.

26. C&S East Point operates three banking offices in Fulton County. As of December 31, 1970, it had total assets of $28.4 million, total deposits of $23.3 million, and net loans and discounts of $22.9 million. As of June 30, 1970, C&S National and C&S East Point combined had total deposits of about $732 million and represented the largest banking organization in Fulton County, accounting for approximately 28 percent of total Fulton County deposits.

27. C&S North Fulton operates a single banking office in North Fulton County. As of December 31, 1970, it had total assets of $7.7 million, total deposits of $6.3 million, and net loans and discounts of $5.6 million.

28. C&S Sandy Springs operates a single banking office in North Fulton County. As of December 31, 1970, it had total assets of $22 million, total deposits of $19 million, and net loans and discounts of $11.7 million.

29. The predominant share of the business banking offices in North Fulton County receive is derived from that area. North Fulton County is a concentrated banking market. As of June 30, 1970, five commercial banks operated banking offices there. As of that date, C&S North Fulton and C&S Sandy Springs accounted for about 46 percent of the total deposits held by all banking offices located in North Fulton County. C&S East Point has recently opened a single banking office in North Fulton County.

30. Fulton County is also a concentrated banking market. As of June 30, 1970, the four largest banking organizations accounted for about 85 percent of total Fulton County deposits. C&S National presently holds about 27 per cent; its subsidiary, C&S East Point, holds about 1 percent. Thus, the C&S System holds over 28 percent, the largest share held by any banking organization. Combined, C&S Sandy Springs and C&S North Fulton hold about 1 percent.

31. The Atlanta Area is also a concentrated banking market. As of June 30, 1970, the four largest banking organizations accounted for about 85 percent of total Atlanta Area deposits. The C&S System holds over 29 percent, the largest share held by any organization. Combined, C&S Chamblee, C&S Park National, C&S South DeKalb, C&S North Fulton, and C&S Sandy Springs hold about 2 percent of Atlanta Area deposits.

32. Customers of C&S National, C&S Emory, C&S East Point, C&S Chamblee, C&S Park National, C&S South DeKalb, C&S Tucker, C&S North Fulton, and C&S Sandy Springs regularly utilize interstate communications including the mails, telephone and telegraph, to carry on their business with, and apply for and obtain the services provided by these banks. Each of the defendant banks regularly utilizes interstate communications including the mails, telephone, and telegraph, and conducts business with, and provides services to, customers, institutions, and other banks located in States other than Georgia. Each of the defendant banks is engaged in interstate commerce.

33. Prior to 1971, Georgia law prohibited banks from branching outside the cities in which they were located. This restricted the ability of the major Atlanta banks to open branches in Fulton and DeKalb Counties. Since 1960, Georgia law has prohibited bank holding companies from owning more than 5 percent of the outstanding shares of two or more banks. In response to these prohibitions against geographic expansion, the major Atlanta banks, C&S National among them, developed various relationships with suburban banks in the Atlanta area.

34. The C&S System and each of C&S Chamblee, C&S Park National, C&S South DeKalb, C&S North Fulton, and C&S Sandy Springs have had, among others, the following relationships: (1) C&S National and various persons associated with it contributed to the initial organization of each bank; (2) C&S Holding acquired 5 percent of the outstanding shares of each bank; (3) C&S National and various persons associated with it assisted in the sale of the remainder of the stock; (4) C&S National provided mutually beneficial correspondent services to each bank; (5) C&S National allowed each bank to use the C&S logogram, which resulted in joint identification; (6) the C&S System provided each bank, in varying degrees, with personnel, management and operational assistance; and (7) C&S National and each bank have, in many instances, jointly de-

termined the competitive strategy to be followed in conducting the business of each bank. Consequently, a close working relationship between each bank and the C&S System was established at the time of each bank's formation and has continued to the present time.

35. C&S Tucker was organized in 1919 and was operated as an independent bank until 1965. In February 1965, C&S National acquired 80 percent of the outstanding shares of C&S Tucker. Subsequently, C&S Holding acquired 5 percent of the outstanding shares, and the remaining 75 percent was acquired by other persons. Following these acquisitions, the C&S System and C&S Tucker had, among others, the relationships described in subsections (4), (5), (6), and (7) of paragraph 34, which have continued to the present time.

36. C&S Sandy Springs, C&S Chamblee, C&S North Fulton, C&S Park National, and C&S South DeKalb were organized in 1959, 1960, 1967, and 1969, respectively. These banks were organized at a time when the areas of DeKalb County and North Fulton County were experiencing a period of significant growth and development. DeKalb County's 1970 population of 414,000 represents a 62 percent increase since 1960. This population increase has been accompanied by an even larger growth in the number and size of commercial and industrial firms located in the area. Although the population center of Fulton County remains the City of Atlanta, that portion of the county's population located in North Fulton County has increased from 3.3 percent in 1950 to 9.2 percent in 1970. North Fulton County has also experienced significant growth and development since 1960.

37. As of January 1, 1971, Georgia law was changed to permit banks to branch throughout the counties in which they maintained banking offices. Because the C&S System maintained banking offices in DeKalb and Fulton Counties as of

January 1, 1971, it could then legally branch and maintain banking offices throughout both counties. In 1970, C&S Emory applied to the Federal Deposit Insurance Corporation to merge C&S Chamblee, C&S Park National, C&S South DeKalb and C&S Tucker into it. Excepting the application to merge C&S Tucker, which was denied, these merger proposals received approval on October 4, 1971. Also in 1970, C&S East Point applied to the Federal Deposit Insurance Corporation to merge C&S Sandy Springs and C&S North Fulton. These merger proposals were also approved on October 4, 1971.

V

Offenses Alleged

38. Beginning in 1959, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, defendants C&S National, C&S Holding, and various other persons entered into a combination with C&S Sandy Springs and various other persons to do those things described in paragraph 34.

39. Beginning in 1960, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, defendants C&S National, C&S Holding, and various other persons entered into a combination with C&S Chamblee and various other persons to do those things described in paragraph 34.

40. Beginning in 1965, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, defendants C&S National, C&S Holding, and various other persons entered into a combination with C&S Tucker and various other persons to do those things described in paragraph 35.

41. Beginning in 1967, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of filing of this complaint, defendants C&S National, C&S Holding, and various other persons entered into a combination with C&S North Fulton and various other persons to do those things described in paragraph 34.

42. Beginning in 1967, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of filing of this complaint, defendants C&S National, C&S Holding, and various other persons entered into a combination with C&S Park National and various other persons to do those things described in paragraph 34.

43. Beginning in 1969, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, defendants C&S National, C&S Holding, and various other persons entered into a combination with C&S South DeKalb and various other persons to do those things described in paragraph 34.

44. The aforesaid combinations described in paragraphs 38, 39, 40, 41, 42, and 43 have been and are jointly and severally, in unreasonable restraint of the above described interstate trade and commerce in violation of Section 1 of the Sherman Act.

45. Pursuant to the aforesaid unlawful combinations the defendants have done, among others, those things described in paragraph 34 and 35 above.

46. Each of the defendants C&S Chamblee, C&S Park National, and C&S South DeKalb have entered into agreements with C&S Emory which, if carried out, will result in the merger of C&S Chamblee, C&S Park National and C&S South DeKalb into C&S Emory. Each of the defendants C&S Sandy Springs and C&S North Fulton have entered into agreements with C&S East Point, which if carried out, will result in

the merger of C&S Sandy Springs and C&S North Fulton into C&S East Point. The Board of Directors of the Federal Deposit Insurance Corporation approved these proposed mergers on October 4, 1971.

47. The joint and several effects of the aforesaid agreements to merge may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act.

VI

Effects

48. The effects of the offenses alleged in paragraphs 38 through 47 of this complaint are, among others, the following:

(a) Actual competition and the potential for increased competition between and among the defendant commercial banks have been and will be eliminated and unreasonably restrained;

(b) Competition generally in commercial banking in DeKalb County, Fulton County, North Fulton County, and the Atlanta Area has been and will be substantially lessened; and

(c) Concentration in commercial banking in DeKalb County, Fulton County, North Fulton County, and the Atlanta Area will be substantially increased.

PRAYER

Wherefore plaintiff prays

1. That the aforesaid combinations described in paragraphs 38 through 43 of this complaint be adjudged to be unlawful and in violation of Section 1 of the Sherman Act.

2. That the defendants, their successors, assignees, and transferees, and their officers, directors, agents, and employees thereof, and all other persons acting or claiming to act on behalf thereof, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the aforesaid offenses, and from engaging in other combinations, conspiracies, contracts, agreements, understandings or concerts of action having similar purposes or effects, and from adopting or following any practices, plans, or programs having similar purposes or effects.

3. That the aforesaid mergers described in paragraph 46 of this complaint, pursuant to the agreements described therein, be adjudged to be unlawful and in violation of Section 7 of the Clayton Act.

4. That the defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid mergers, or any similar plans or agreements, the effect of which would be in any way to merge, consolidate, or in any other way combine the businesses of the defendants.

5. That defendants C&S National, C&S Holding, C&S Emory, C&S East Point, and all persons controlled either directly or indirectly by C&S National be enjoined for a period of ten years from the date of judgment in this action from acquiring control over or merging, consolidating, or combining with any other commercial banking organizations operating in the Atlanta Area.

6. That the plaintiff have such other and further relief as the Court may deem just and proper.

7. That the plaintiff recover the costs of this suit.

/s/ DONALD A. KINKAID
/s/ JOE SIMS
/s/ TIMOTHY BURKE
/s/ KENNETH D. STERN
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/s/ JOHN W. STOKES, JR.
United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ANSWER OF DEFENDANTS

(Filed May 5, 1972)

Number and Title omitted.

Come now The Citizens and Southern National Bank ("C&S National"), Citizens and Southern Holding Company ("C&S Holding"). The Citizens and Southern Emory Bank ("C&S Emory"). The Citizens and Southern Bank of East Point ("C&S East Point"), The Citizens and Southern Bank of Chamblee ("C&S Chamblee"), The Citizens and Southern Park National Bank ("C&S Park National"), The Citizens and Southern South DeKalb Bank ("C&S South DeKalb"), The Citizens and Southern Bank of Tucker ("C&S Tucker"), The Citizens and Southern Bank of North Fulton ("C&S North Fulton"), and The Citizens and Southern Bank of Sandy Springs ("C&S Sandy Springs"), defendants in the above-styled lawsuit, and file this, their Answer to the Complaint heretofore served upon them.

First Defense

In answer to the numbered paragraphs of the Complaint, defendants show the following:

1

Defendants admit that this Court has jurisdiction of this action under Section 15 of the Clayton Act, but defendants deny that this Court has jurisdiction of this action under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4),

commonly known as the Sherman Act. By way of further answer, defendants deny that they or any of them have violated any of the statutes cited in paragraph 1 of the Complaint or that they or any of them would, by consummating the mergers alleged in the Complaint, violate any of those statutes.

2

Defendants admit the allegations contained in paragraph 2 of the Complaint.

3

Defendants admit the allegations contained in paragraph 3 of the Complaint, but show that C&S National was established in Savannah, Georgia, in the Southern District of Georgia. Defendants show further that C&S National, as the sole owner of C&S Holding, is a registered bank holding company under the laws of the United States.

4

Defendants admit the allegations contained in paragraph 4 of the Complaint.

5

Defendants admit the allegations contained in paragraph 5 of the Complaint.

6

Defendants admit the allegations contained in paragraph 6 of the Complaint.

7

Defendants admit the allegations contained in paragraph 7 of the Complaint.

8

Defendants admit the allegations contained in paragraph 8 of the Complaint.

9

Defendants admit the allegations contained in paragraph 9 of the Complaint.

10

Defendants admit the allegations contained in paragraph 10 of the Complaint.

11

Defendants admit the allegations contained in paragraph 11 of the Complaint.

12

Defendants admit the allegations contained in paragraph 12 of the Complaint.

13

Defendants deny the allegations contained in paragraph 13 of the Complaint.

14

Defendants admit that paragraph 14 of the Complaint uses the term "Atlanta Area" to mean the area comprising DeKalb and Fulton Counties, Georgia, but defendants deny the relevance of that term to this cause of action.

15

Defendants admit that paragraph 15 of the Complaint uses the term "North Fulton County" to mean that part of Fulton County situated north of the Atlanta city limits, but defendants deny the relevance of that term to this cause of action.

16

Defendants deny the accuracy and completeness of the definition in paragraph 16 of the Complaint but note its use by plaintiff in the Complaint.

17

Answering paragraph 17 of the Complaint, defendants admit that commercial banks play an important role in the nation's economy and that many commercial banks perform some or all of the functions described in paragraph 17 of the Complaint. Defendants deny that all of the functions described in paragraph 17 of the Complaint are performed by all commercial banks, and defendants assert that many financial institutions generally perform the same or similar functions as do commercial banks in the geographic areas relevant in this case and are therefore in direct and actual competition with defendants. Defendants therefore expressly deny the last sentence of paragraph 17 and generally deny any and all other allegations contained in paragraph 17, except for those expressly admitted herein.

18

Defendants admit that the figures alleged in paragraph 18 of the Complaint are roughly accurate, but defendants show that the figures alleged for C&S National's total assets, total deposits, and net loans and discounts as of December 31, 1970, include C&S National's banking offices in six cities in Georgia as well as C&S National's eight majority-owned banking affiliates. By way of further answer, defendants expressly deny any implication to the effect that the "Atlanta Area" constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

19

Defendants admit that the figures alleged in paragraph 19 of the Complaint are roughly accurate, but defendants expressly deny any implication to the effect that DeKalb County constitutes a relevant market area or an appropriate geographic region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

20

Defendants admit the figures alleged in paragraph 20 of the Complaint are roughly accurate, but defendants expressly deny any implication to the effect that DeKalb County constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

21

Defendants admit that the figures alleged in paragraph 21 of the Complaint are roughly accurate, but defendants expressly deny any implication to the effect that DeKalb County constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

22

Defendants admit that the figures alleged in paragraph 22 of the Complaint are roughly accurate, but defendants expressly deny any implication to the effect that DeKalb County constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

23

Defendants admit that the figures alleged in paragraph 23 of the Complaint are roughly accurate, but defendants expressly deny any implication to the effect that DeKalb County constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

24

Defendants admit that the figures alleged in paragraph 24 of the Complaint are roughly accurate, but defendants expressly

deny any implication to the effect that DeKalb County constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

25

Answering paragraph 25 of the Complaint, defendants deny that DeKalb County constitutes a concentrated banking market, and deny further that the term "concentrated" as used by plaintiff throughout the Complaint has any meaning whatsoever. Defendants are without knowledge or information sufficient to form a belief as to the truth of the figures alleged in paragraph 25 of the Complaint, but defendants deny that figures such as those alleged in said paragraph 25 give a complete and accurate description of competition in the relevant line of commerce in the relevant geographic market. To the extent not expressly admitted, defendants deny the remaining allegations of paragraph 25 of the Complaint.

26

Defendants admit that the figures alleged in paragraph 26 of the Complaint are roughly accurate, except that defendants expressly deny that "Fulton County" constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

27

Defendants admit that the figures alleged in paragraph 27 of the Complaint are roughly accurate, except that defendants expressly deny that "North Fulton County" constitutes a rele-

vant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

28

Defendants admit that the figures alleged in paragraph 28 of the Complaint are roughly accurate, except that defendants expressly deny that "North Fulton County" constitutes a relevant market area or an appropriate geographical region or section of the country within the purview of either Section 7 of the Clayton Act or Section 1 of the Sherman Act with respect to the business or activities of the defendants or any of them.

29

Answering paragraph 29 of the Complaint, defendants deny that "North Fulton County" constitutes a concentrated banking market. Defendants are without knowledge or information sufficient to form a belief as to the truth of the figures alleged in paragraph 29 of the Complaint, but defendants deny that figures such as those alleged in said paragraph 29 give a complete and accurate description of competition in the relevant line of commerce in the relevant geographic market. To the extent not expressly admitted, defendants deny the remaining allegations of paragraph 29 of the Complaint.

30

Answering paragraph 30 of the Complaint, defendants deny that Fulton County constitutes a concentrated banking market. Defendants are without knowledge or information sufficient to form a belief as to the truth of the figures alleged in paragraph 30 of the Complaint, but defendants deny that figures such as those alleged in said paragraph 30 give a complete and accurate

description of competition in the relevant line of commerce in the relevant geographic market. To the extent not expressly admitted, defendants deny the remaining allegations of paragraph 30 of the Complaint.

31

Answering paragraph 31 of the Complaint, defendants deny that the "Atlanta Area" constitutes a concentrated banking market. Defendants are without knowledge or information sufficient to form a belief as to the truth of the figures alleged in paragraph 31 of the Complaint, but defendants deny that figures such as those alleged in said paragraph 31 give a complete and accurate description of competition in the relevant line of commerce in the relevant geographic market. To the extent not expressly admitted, defendants deny the remaining allegations of paragraph 31 of the Complaint.

32

Answering paragraph 32 of the Complaint, defendants admit that they are engaged in interstate commerce, but deny the remaining allegations of said paragraph.

33

The allegations contained in paragraph 33 of the Complaint allege a partial but incomplete history of the anti-competitive Georgia laws which have sought to restrict the growth and expansion of all banks and bank holding companies in the state, including the major banks in Atlanta. Beginning in 1960, C&S sought to, and did, extend the pro-competitive benefits of C&S banking to residents and businesses located in suburban areas surrounding the city limits of Atlanta, Augusta and Savannah, through the vehicle of organizing and establishing the "correspondent Associate" banks, which remained in full com-

pliance with the artificial restrictions of Georgia law. Other banks in Atlanta and throughout the state did likewise. Defendants deny that Georgia law since 1960 has prohibited Bank holding companies from owning more than 5% of the outstanding shares of two or more banks, but show instead that Georgia law has prevented bank holding companies from **thereafter** acquiring or holding direct or indirect ownership of more than 5% of the voting shares of any bank. [Ga. Code Ann. §13-207]. Defendants deny the inference that C&S National responded to these state law restrictions by developing relationships with existing suburban banks in the Atlanta area. By way of further answer, defendants show that C&S National responded to these state law restrictions by helping establish and organize new banks and, in the case of C&S Tucker, by reorganizing an existing, dormant bank, all with the permission of state and federal bank regulatory agencies.

34

Answering paragraph 34 of the Complaint, defendants deny the allegations of subparagraph (7) thereof, but admit the remaining allegations contained in said paragraph 34.

35

Answering paragraph 35 of the Complaint, defendants admit the allegations of the first sentence, deny the allegations of the second sentence, and admit the allegations of the third sentence. Defendants admit that after C&S Holding acquired 5% of the outstanding shares of C&S Tucker, the C&S System and C&S Tucker had the relationships described in subsections (4), (5), and (6) of paragraph 34 of the Complaint, but defendants deny that the C&S System and C&S Tucker engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint.

36

Defendants admit the allegations contained in paragraph 36 of the Complaint.

37

Defendants admit the allegations contained in paragraph 37 of the Complaint.

38

Answering paragraph 38 of the Complaint, defendants admit that C&S National, C&S Holding, and C&S Sandy Springs have engaged in the relationships described in subsections (1), (2), (3), (4), (5), and (6) of paragraph 34 of the Complaint, but deny that C&S National, C&S Holding, and C&S Sandy Springs have engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations that various other persons, who are not named by the Complaint, have been involved in the relationships described in paragraph 34 of the Complaint.

39

Answering paragraph 39 of the Complaint, defendants admit that C&S National, C&S Holding, and C&S Chamblee have engaged in the relationships described in subsections (1), (2), (3) (4), (5), and (6) of paragraph 34 of the Complaint, but deny that C&S National, C&S Holding, and C&S Chamblee have engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the alegations that various other persons, who are not named by the Complaint, have been involved in the relationships described in paragraph 34 of the Complaint.

40

Answering paragraph 40 of the Complaint, defendants admit the C&S National, C&S Holding, and C&S Tucker have engaged in the relationships described in subsections (4), (5), and (6) of paragraph 34 of the Complaint, but deny that C&S National, C&S Holding, and C&S Tucker have engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations that various other persons, who are not named by the Complaint, have been involved in the relationships described in paragraph 34 of the Complaint.

41

Answering paragraph 41 of the Complaint, defendants admit that C&S National, C&S Holding, and C&S North Fulton have engaged in the relationships described in subsections (1), (2), (3), (4), (5), and (6) of paragraph 34 of the Complaint, but deny that C&S National, C&S Holding, and C&S North Fulton have engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations that various other persons, who are not named by the Complaint, have been involved in the relationships described in paragraph 34 of the Complaint.

42

Answering paragraph 42 of the Complaint, defendants admit that C&S National, C&S Holding, and C&S Park National have engaged in the relationships described in subsections (1), (2), (3), (4), (5), and (6) of paragraph 34 of the Complaint, but deny that C&S National, C&S Holding, and C&S Park Na-

tional have engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations that various other persons, who are not named by the Complaint, have been involved in the relationships described in paragraph 34 of the Complaint.

43

Answering paragraph 43 of the Complaint, defendants admit that C&S National, C&S Holding, and C&S South DeKalb have engaged in the relationships described in subsections (1), (2), (3), (4), (5), and (6) of paragraph 34 of the Complaint, but deny that C&S National, C&S Holding, and C&S South DeKalb have engaged in the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations that various other persons, who are not named by the Complaint, have been involved in the relationships described in paragraph 34 of the Complaint.

44

Defendants deny the allegations contained in paragraph 44 of the Complaint. By way of further answer, defendants assert that the relationships described in subsections (1), (2), (3), (4), (5), and (6) of paragraph 34 were established with the consent or knowledge of the state and federal bank regulatory agencies and have, from their very initiation, encouraged and enhanced competition and have promoted trade and commerce in the relevant geographic markets by introducing and expanding banking services therein. These relationships, therefore, have met the banking convenience and needs of the communities served by the defendants.

45

Answering paragraph 45 of the Complaint, defendants admit that they have engaged in the relationships described in paragraphs 34 and 35 of the Complaint, with the exception of the relationships described in subsection (7) of paragraph 34 of the Complaint. Defendants deny that these relationships constitute unlawful combinations.

46

Defendants admit the allegations contained in paragraph 46 of the Complaint.

47

Defendants deny the allegations contained in paragraph 47 of the Complaint. Further, defendants deny that the merger transactions can be judged jointly or cumulatively, but show that each transaction must be judged separately and independently of the others. By way of further answer, defendants assert that the consummation of each and every one of the agreements described in paragraph 46 of the Complaint will encourage and enhance competition in the relevant geographic and product markets by expanding banking services therein and will promote the convenience and needs of the communities served by the defendant banks.

48

Answering the subparagraphs of paragraph 48 of the Complaint, the defendants allege as follows:

(a) Defendants deny the allegations contained in subparagraph (a) of paragraph 48 of the Complaint. By way

of further answer, defendants show that the banks involved in this lawsuit are not in actual competition with one another and that there is no potential for increased competition between and among them.

(b) Defendants deny the allegations contained in subparagraph (b) of paragraph 48 of the Complaint. By way of further answer, defendants deny that DeKalb County, Fulton County, North Fulton County, and the Atlanta Area are relevant geographic markets in this lawsuit, and, in any event, defendants deny that the consummation of the agreements described in paragraph 46 of the Complaint will substantially lessen competition in those areas.

(c) Defendants deny the allegations contained in subparagraph (c) of paragraph 48 of the Complaint. By way of further answer, defendants deny that DeKalb County, Fulton County, North Fulton County, and the Atlanta Area are relevant geographic markets in this lawsuit. Defendants further deny that commercial banking is concentrated in those areas and that the consummation of the agreements described in paragraph 46 of the Complaint will substantially increase concentration in those areas.

Defendants further deny that commercial banking is the applicable product market by which to judge the allegations of the Complaint and this paragraph 48. By way of further answer, defendants show that they would not be guilty of the offenses alleged in the Complaint even if commercial banking were the applicable product market.

49

Defendants deny each and every allegation in the Complaint that has not been either expressly admitted or denied heretofore.

Second Defense

The Complaint fails to state a claim upon which relief can be granted against defendants or any of them.

Third Defense

The allegations of the Complaint based on Section 1 of the Sherman Act fail to state a claim upon which relief can be granted against defendants or any of them.

Fourth Defense

The allegations of the Complaint based on Section 7 of the Clayton Act fail to state a claim upon which relief can be granted against defendants or any of them.

Fifth Defense

The proposed mergers that resulted in the initiation of this lawsuit constitute what is essentially an internal reorganization. Five of the defendant banks, C&S Chamblee, C&S Park National, C&S South DeKalb, C&S North Fulton, and C&S Sandy Springs, were organized under C&S guidance and direction, and a sixth defendant, C&S Tucker, was reorganized under C&S guidance and direction, all at a time when Georgia law did not permit C&S National or any other Atlanta bank to branch outside the City of Atlanta. [These six defendants are hereafter referred to collectively as "C&S Correspondent Associates"]. A close working relationship has existed ever since, and a majority of the stock in each bank has been held continuously by directors, officers, and employees of C&S National, directors, officers, and employees of subsidiary banks of C&S Holding, and a number of influential customers who maintain significant banking relationships with one or more such banks.

The remaining stock is well dispersed, with no significant blocks held independently of the C&S System. The management of each of the C&S Correspondent Associates has been drawn from the C&S System, C&S National has hired their employees, and these employees participate fully in the various employee benefits provided by the C&S System. C&S National provides credit services, investment advice, and numerous other services to the C&S Correspondent Associates in much the same manner as it does for its own branches and subsidiary banks. Like the other banks in the C&S System, the C&S Correspondent Associates use the C&S name and logo and advertise jointly with C&S. A significant percentage of the loan portfolio of each Correspondent Associate is made up of loans purchased from C&S National. C&S National has subscribed to capital notes of each C&S Correspondent Associate when additional capital has been needed. In short, the C&S Correspondent Associates are recognized by the public and by C&S National as C&S banks. They do not compete today and have not competed in the past. The proposed mergers have been contemplated since the C&S Correspondent Associates were organized by C&S, but the mergers were not possible when Georgia law prevented banks from branching beyond municipal boundaries. The mergers have now been made possible by a change in Georgia's branch banking law which became effective on January 1, 1971. The proposed mergers, if allowed, will not alter the existing competitive structure in any relevant geographic market, and they will not add to the concentration of banking resources in any relevant geographic market. Furthermore, there is no reasonable probability that the C&S Correspondent Associates will become disassociated from the C&S System in the future if the proposed mergers are denied.

Sixth Defense

The Board of Governors of the Federal Reserve System, not this Court, has jurisdiction under the Bank Holding Company

Act ("BHCA") [12 U.S.C. § 1841, et seq.] to determine the legality of the transactions and relationships existing between and among C&S National, C&S Holding, and their affiliates and subsidiaries.

Seventh Defense

In 1966 and 1968, the Federal Reserve Board in the exercise of its jurisdiction conducted an investigation into the legality of the C&S acquisitions and relationships, and plaintiff participated in a hearing conducted in connection with that investigation, during which the relationships alleged by plaintiff in paragraphs 34 and 35 of the Complaint to violate the Sherman Act were fully explored. The Board did not find that the acquisitions and operating relationships violated the then existing provisions of the BHCA. Plaintiff did not challenge the Board's decision or take any other action, until the filing of the Complaint in this lawsuit, to challenge the legality of the relationships attacked by the Complaint, and is therefore barred, by laches and the statute of limitations, estopped and forever foreclosed from doing so now.

Eighth Defense

Section 11(e) of the BHCA [12 U.S.C. § 1849(e)] requires that the legality of the transactions whereby C&S National and C&S Holding acquired and established continuing operating relationships with the C&S Correspondent Associates be determined by Section 3 of the BHCA rather than by Section 1 of the Sherman Act. The C&S relationships did not violate Section 3 of the BHCA at the time they were initiated, and do not now. The structure, organization and operating relationships between and among defendants are in compliance with the BHCA, sanctioned and exclusively regulated thereby, and are, therefore, not subject to attack under Section 1 of the Sherman Act in this Court.

Ninth Defense

The transactions whereby C&S National and C&S Holding acquired and established continuing operating relationships with C&S Sandy Springs, C&S Chamblee, and C&S Tucker were consummated prior to July 1, 1966, and are therefore conclusively presumed by Section 11(d) of the BHCA [12 U.S.C. § 1849 (d)] not to have been in violation of Section 1 of the Sherman Act.

Tenth Defense

The C&S Correspondent Associates are "subsidiaries" of C&S National and C&S Holding as defined by Section 2(d)(3) of the BHCA [12 U.S.C. § 1841(d)(3)]. These intra-enterprise relationships, therefore, cannot constitute a "combination . . . or conspiracy" in restraint of trade or commerce in violation of Section 1 of the Sherman Act.

Eleventh Defense

C&S National and C&S Holding caused the formation of the C&S Correspondent Associates as subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof. C&S Holding held part of the stock of such subsidiary corporations. The effect of such formations was not to substantially lessen competition; therefore, said matters (alleged by the complaint to violate the Sherman Act and the Clayton Act) are protected by Section 7 of the Clayton Act.

Twelfth Defense

The plaintiff is not entitled to injunctive relief against the merger agreements described in paragraph 46 of the Complaint

because there is no actual competition between and among the defendants, and no competition will be eliminated by the consummation of the merger agreements. The consummation of the agreements will serve only to simplify and reorganize the intra-enterprise relationship between and among the defendants and to permit the defendants to offer better and more competitive banking services. The plaintiff is not entitled to the relief sought on the basis of the potential for future competition between the defendants. The alleged potential competition is speculative, conjectural, and cannot constitute the basis for relief under the antitrust laws.

Thirteenth Defense

As a further defense to the charges of the Complaint, defendants contend that even admitting *arguendo* that the effect of the proposed mergers would be to substantially lessen competition or to create a tendency towards a monopoly in a line of commerce in a section of the country, the anti-competitive effects are clearly outweighed in the public interest by the probable effect of the transactions in meeting the convenience and needs of the communities to be served.

Fourteenth Defense

The operating relationships between and among the defendants are now and have been since their inception designed to bring sound, safe, innovative, competitive C&S banking to suburban communities which otherwise would not have been so served. The Correspondent Associate form chosen by C&S to accomplish this goal has utilized traditional and accepted forms of correspondent banking relationships which are not and have not been in unreasonable restraint of trade.

PRAYER

Wherefore, having fully answered the Complaint, defendants and each of them pray that this action be dismissed with prejudice against the plaintiff; that they may have such other and further relief as this Court may deem just and proper; and, that they recover the costs of this action from the plaintiff.

This 5th day of May, 1972.

Respectfully submitted

/s/ DANIEL B. HODGSON
/s/ JAMES E. THOMAS
/s/ MICHAEL A. DOYLE
/s/ JOHN K. TRAIN
/s/ WALTER M. GRANT
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(Certificate of Service Omitted in Printing.)

[1*] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Title Omitted in Printing)

Transcript of proceedings had before The Honorable Charles A. Moye, Jr., Judge, United States District Court, on the 25th day of September, 1972, commencing at the hour of 10:00 o'clock, a.m., in Atlanta, Fulton County, Georgia.

[2] Appearances of Counsel:

For the Plaintiff: Donald A. Kinkaid, Esq., Kenneth D. Stern, Esq., Curtis L. Frisbie, Jr., Esq., Neal F. Lehman, Esq.

For the Defendants: Daniel B. Hodgson, Michael A. Doyle, Esq., Philip A. Roache, Esq., Nevins D. Baxter, Esq., Walter M. Grant, Esq.

The Court: Call the case of the United States of America against the C&S National Bank, No. 15823. Is everyone ready?

Mr. Kinkaid: Yes, Your Honor.

The Court: C&S?

Mr. Hodgson: Yes, Your Honor.

The Court: Now, have each of you submitted your list of exhibits?

Mr. Hodgson: They are submitted and admitted, I believe, Your Honor.

The Court: All right. If not, the clerk is directed to admit them and prepare an official list of them and you will reserve

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

any objections by submitting a memorandum of objections with respect to the exhibits of the opposite party.

Mr. Kinkaid: Yes, sir.

The Court: Anything further before we proceed?

[2] Appearances of Counsel:

For the Plaintiff: William E. Swope, Esq., Donald A. Kinkaid, Esq., Joe Sims, Esq., Kenneth D. Stern, Esq., Curtis L. Frisbie, Jr., Esq., Neal F. Leshman, Esq.

For the Defendants: Daniel B. Hodgson, Esq., Michael A. Doyle, Esq., Philip A. Roache, Esq., Walter M. Grant, Esq.

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The Court: All right. If not, the clerk is directed to admit them and prepare an official list of them and you will reserve any objections by submitting a memorandum of objections with respect to the exhibits of the opposite party.

Mr. Kinkaid: Yes, sir.

The Court: Anything further before we proceed?

[3] Mr. Kinkaid: Yes, sir.

The Court: Anything further before we proceed?

Mr. Kinkaid: Yes, Your Honor, before we proceed, Mr. Gladden on behalf of the Trust Company would like to bring a matter to Your Honor's attention.

The Court: All right, sir, you may proceed.

Mr. Gladden: Your Honor, my name is Joe Gladden of the firm of King and Spalding. We represent the Trust Company of Georgia, which has supplied, pursuant to a subpoena duces tecum to the plaintiff in this action, certain information having to do with origin of deposits, which upon motion of the Trust Company of Georgia, as well as several other banks, was made subject to a protective order entered by this court in July. The terms of that protective order did not cover the handling of that information in the event it was utilized at trial, for the reason that at that time neither the parties nor the banks producing the information were aware exactly how the information would be used.

We have been informed by the Government **[4]** that one of their exhibits incorporates information produced by the Trust Company of Georgia showing origin of demands and certain deposits, which was furnished pursuant to the subpoena and made subject to the protective order. We simply wish to move the Court with respect to that exhibit, and unfortunately I don't know how it has been identified in the memorandum, pre-trial memorandum, but with respect to that exhibit we wish to move the Court to make that exhibit subject to the protective order to be maintained by the Clerk under seal, pursuant to the terms of the order.

[5] The Court: I assume, would the parties have accepted the information that there is no violation of the protective order as of yet?

Mr. Gladden: No, sir.

The Court: Any objections to that direction and can it be handled?

Mr. Kinkaid: Yes, Your Honor, plaintiff would object to placing this material under a protective order for all purposes. The material involved shows the origin by zip code of demand deposits under $1,000 and I may note that we have similar exhibits for other banks which had previously been granted a protective order for pre-trial purposes. All the other banks have also been notified that exhibits similar to Trust Company exhibit will and have been offered in evidence and Trust Company is the only bank which has sought to continue the application of the order to this material at this point.

It's our feeling that the information involved would not in any way prejudice the Trust Company if it becomes a part of the public record. I do believe that the burden would be on the parties seeking the order to demonstrate that disclosure or placing this exhibit in public record would constitute serious prejudice to the parties.

[6] The Court: With respect to the relief you want, is it that the figures not be referred to or used by in respect to witnesses here during the trial or simply that at the close of the trial the exhibit be sealed?

Mr. Gladden: The latter; the latter, Your Honor.

The Court: In this case, why don't we simply defer ruling on the motion until the close of the trial. Please notify counsel when the close of the trial occurs and then we'll take up your motion at that time.

Mr. Gladden: Your Honor, if you prefer, we'll be happy to file a written motion with a brief.

The Court: Please do so. That way I'll certainly remember it better.

All right, is there anything else before we proceed?

Mr. Hodgson: In pre-trial conference in chambers last week, both of us agreed that in view of the rather extensive briefing that has been given to the Court and the number of documents

t' at have been presented to the Court, there'll be no need for opening statements. So far as the defendants are concerned, that is basically still the case. However, the trial briefs that were submitted, it seems to me, make it appropriate for us, when our case comes along, to suggest to the Court certain points of emphasis that may have been raised by virtue [7] of those briefs having been filed. We would like to reserve our right for that purpose.

The Court: Mr. Kinkaid, are you ready?

Mr. Kinkaid: Yes, sir.

The Court: You may proceed.

Mr. Kinkaid: Plaintiff calls Mr. Dave Padgett.

Whereupon,

W. D. PADGETT,

was called as a witness by and on behalf of the Government, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Kinkaid

Q. Would you please state your full name? A. William David Padgett.

Q. Where are you employed, Mr. Padgett? A. Trust Company of Georgia, Atlanta, Georgia.

Q. What is your position with Trust Company? A. Group vice president.

Q. Are you in charge of any department or division of Trust Company? A. The Southeastern Division of the United States Division, which handles all of our business outside the City of Atlanta, and financial institutions inside the City of Atlanta.

[8] The Court: Before you proceed, Mr. Kinkaid, let me inquire, what is the situation with respect to a transcript? It will have some bearing on the extensiveness of my notes I'm going to have to take. Is there going to be a transcript prepared prior to the final briefs or not?

Mr. Kinkaid: My understanding is, sir, that there will be a transcript prepared for each day's proceedings that will be available sometime in the evening.

The Court: But, before I have to make a decision, there will be a complete transcript?

Mr. Kinkaid: Yes, sir.

The Court: All right.

By Mr. Kinkaid

Q. Could you give us a rough idea of just what this particular department does at Trust Company? A. Well, as I said, we handle all of our commercial banking business outside of the City of Atlanta with the exception of national accounts, financial institutions inside the City of Atlanta, deals mainly with commercial, large commercial accounts, domiciled outside the City of Atlanta in the southeast, and correspondent accounts, bank accounts.

Q. Roughly how many correspondent bank accounts does Trust Company presently have? A. As I recall, 452, in that particular division that I supervise.

[9] Q. What geographic area does that division cover? A. Eight southeastern states.

Q. What are your duties and responsibilities insofar as the correspondent bank accounts are concerned? A. Well, to service those that we have and to secure others in the course of new business.

Q. How long have you been group vice president? A. Oh, approximately five years.

Q. What were you before you became group vice president? A. Vice president.

Q. Were you in the correspondent area as well at that time? A. Yes, sir.

Q. As a matter of fact, how long have you been working in the correspondence area? A. Since 1955.

Q. And has it always been with Trust Company? A. Yes.

Q. Are you familiar with the term "correspondent service"? A. Yes.

Q. Is that a term that you use in your business? A. Well, that's a pretty all-encompassing term, but, yes.

Q. Could you give us your definition or understanding [10] of, from your own standpoint, what is encompassed by the term "correspondent service"? A. Well, it's basically any service that they might call on us that we can supply starting from clearing items and collections right on through the latest technical service offered in the computer service and automation.

[11] Q. Is there any definition of correspondent service that, to your knowledge, is accepted generally in the industry or does it vary from bank to bank? A. I think definitely it would vary from bank to bank as to what they would do and when they would do it and how they would do it, and the charge, if any, the fee, acceptance or what.

Q. Could you tell us the basic correspondent services that Trust Company offers? A. You mean you want a list of—you want me to name the——

Q. Yes, name as many as you can think of, offhand. A. Well, of course, your main service would be the clearing of checks and collections, shipment of coin and currency, credit inquiries, over-lines, computer services, demand deposit accounting, savings, CD's accounting, monthly repayment loan, accounting on

computer, investment advice, bond services, safekeeping of securities.

The Court: You are going too fast.

A. I am sorry.

The Court: Advice?

A. Advice.

The Court: All right: What else?

A. Safekeeping of securities, services through **[12]** your various specialty departments, your international department, trust department, corporate trust department.

Q. Let's go back through these. A. Yes, sir.

Q. And take one, each one at a time, and I would ask you to give us some idea of just what each one of these services involves, insofar as Trust Company is concerned. Why don't we start with the check-clearing. A. Well, the correspondent bank will prepare what we refer to as a cash letter, in some cases, depending on the degree of the usage, it may be all of the items outside of the particular city where they are located, and send it to you for collection. You process it and send it—forward it on to the centers on which they are drawn or to the Federal Reserve Bank. It would, on the other hand, you would probably intercept their cash letter, their Fed Cash letter from the Fed Reserve Bank paying those items, or particularly, if you are doing a demand deposit and accounting on computer collection part of it, would simply mean any item that they might have in the way of a draft or bill of lading with documents attached or trade acceptance or what-have-you, that they might forward for collection, which you would, in turn, collect for them and credit their account, et cetera.

[13] The Court: Excuse me. Does your eight Southeastern states coincide with the Atlanta Federal Reserve Bank?

A. I would--rather than answer that, I would prefer to name the states that we do handle, it is North and South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi and Louisiana.

Q. You just mentioned a term "intercepting", was it a Fed cash letter? A. Yes, sir.

Q. Could you just explain that briefly? A. Well, if you are doing the demand deposit accounting, in other words, if you are doing the bookkeeping for a bank, then you can pick up their—the Federal Reserve sends them a cash letter each day of all items drawn on them, so you just shortstop it, instead of it going to you and back, you just shortstop it. It saves, in some cases, nearly a day's time.

Q. How are your check-clearing services paid for by the correspondent bank? A. Well, usually you measure their cost on an analysis basis, and it is done by balances, there is no actual charge involved. They maintain sufficient balances with you to pay for this particular service.

Q. The next item you mentioned was coin and **[14]** currency. Could you just briefly indicate what that means?. A. Well, your banks that are not members of the Federal Reserve system depend on their correspondent banks in the Reserve city to furnish them coin and currency, in most cases. It depends on their particular uses. A lot of banks even generate more coin and currency than it needs, so there's a problem of shipping it to their correspondent. Rather than shipping it to them, suppose, for example, they have a military installation in their town and have a need for a large amount of cash, say once or twice a month, they would order this; if they are not a member of Fed, they do not. They would have to order it from their correspondent bank and pay for it in that manner.

Q. I think the next item on your list was—had to do with credit. Could you explain more of what you had in mind there? A. Well, we refer to it as over-lines or any credit that would

normally exceed their legal limit. It does not necessarily have to be the case, but in most instances, it is. It could be a small bank in a small town would have a manufacturer or large customer who might need at a given time during the year credit, say, of a million or two or three million dollars, **[15]** whereas their legal limit could very well be fifty or a hundred thousand dollars. And, by very well going to a correspondent for an overline, this would enable them to maintain their primary position with their customer, and it would be done through them. And in a lot of cases, the local customer would not even know who the correspondent bank was; as far as they're concerned, their local bank is handling it. And they would handle the participation on a cost basis; it is quite common.

Q. Is there any sort of, I guess we can call it, a time factor involved, in that type of participation between the small correspondent and the large bank? A. It depends on who the bank is and how well you know them, and the relationship you have with them, and how many times you have dealt with them, in credit matters, and so you can give an answer on the telephone.

Others, you want the document sent to you, you want to talk about it and so forth and so on. It is just as quick as a telephone call or it could involve weeks of negotiations, depending on the type loan, how complex and so forth. Really, how well you know the people you are dealing with and how often you have dealt with them.

Q. To your knowledge, would there be any difference other than the differences you just noted in terms of type of loan involved? Would there be any difference **[16]** between your handling of a participation with a correspondent bank, on the one hand, and the headquarters of Trust Company processing a loan request placed at one of its branch offices that happened to be over the lending limit of the local branch manager? A. Well, I think in all fairness, I would have to say that in dealing internally from the branch to the main office, et cetera and so forth, you are dealing with really a little different level. And

if a correspondent who maintains substantial balances with you calls in, usually he is dealing direct with a man who can give a decision then and there, if necessary, whereas the other might go through a sort of a committee or require a little discussion and so forth. I would say that being the same type general credit that they would get the answer about the same time. Generally, within the same day, if at all possible, unless it was a very unusual situation.

Q. Now, insofar as your own willingness to participate on large loans from your correspondent banks, is that willingness on your part in any way affected by the money market conditions, if that—I don't know if that is the right term to use or not, but in other words, what I am getting at, is times of easy credit versus times of hard credit, if I may use those **[17]** terms. A. You are referring to the credit crunch of '66-'68, when money was tight and so forth?

Q. I would say that is a good example, yes. A. Well, yes. Money is much more readily available at this time than it was during that time, and we would be in position to give an answer a little quicker. During the credit crunches of '66-'68, there was a lot of times when you had to find the money before you could put it out, if that answers your question.

Q. Another item you have mentioned, I think, before the loan participation, if I recall correctly, had something to do with the credit information. Am I correct in that, was that one of the correspondent services you mentioned? A. Credit information.

Q. Credit information. A. As it pertains to companies, corporations and so forth, yes. That is readily available to them, should they have a customer dealing with a party or a company where they are—you know, they are not known to them and so forth, and it involves a contract or a substantial sum of money, they call and want to know if their customer can deal in full confidence with XYZ Company and so forth.

[18] Q. Is that service used frequently by your correspondent banks? A. Yes, it is. It is a service that they can render to their local customer, when they are dealing with companies that are unknown to them, where they have to—where it involves advancing of money or credit.

Q. How was that service paid for by the correspondent bank? A. Well, of course, this service is readily available to any bank, whether they are a correspondent or not. That is just in the general flow of commerce, that this is—you would give this service to any bank, whether they are a correspondent or not. Of course, a correspondent who maintains balances with you would feel a little freer to call maybe more often on things that are not as important to him as he would if he were not a correspondent.

[19] Q. I may not have asked you, is there any fee for the coin and currency service? A. Not generally, no, unless it's excessive. If you had—again, if you had a military payroll in the area that a bank had to have an excessive amount. Generally, the answer to that would be no, generally, other than an analysis charge.

Q. I'd like to go back to the data processing or computer services that you briefly mentioned earlier. Could you go through those a little slower and sort of indicate to us the various types of data processing services available from Trust Company and give us sort of an idea what each one involves? A. Well, your demand deposit, it would be that actually doing the bookkeeping for all of the banks, demand deposits or checking accounts which means that at the end of the day they would send to you all items, all of the checks drawn on that particular bank. By sorting them and running them through the computer, they would be posted to the proper accounts. You also furnish statements for them on a monthly basis which they send out.

Time deposit, it varies from savings accounts to time certificates, certificates of deposit, et cetera, that you keep an ac-

curate record of them and actually doing the accounting and computing of the interest on the computers. All of this is done for a fee.

[20] On the repayment loans or installment loans, accounting is where you do the monthly, you post it, prepare the documents for them, also post the monthly payments also on a monthly basis. That's also for a fee.

The Court: Before you called one of the items a CD item. Is that a counter-demand?

The Witness: Certificate of deposit, time.

By Mr. Kinkaid

Q. Insofar as the installment loan service that you just indicated, does that—maybe I misunderstood what you said. Does that include sending of bills, so to speak, to the installment loan customers of the correspondent banks? A. Well, you send it, you actually prepare them and send them to the bank. The bank itself sends them the monthly payment coupon book. In other words, I think, I would be safe in saying nothing is mailed directly to the bank customer. Everything goes to the bank, the bank and from the correspondent bank to their customers.

Q. Let's see if we have got everything here. We have installment loan and accounting, demand deposit accounting, savings accounts for which you would include certificates of deposit. Does that take care of all the computer services? A. Various different types of time accounts.

Q. Now, you mentioned the term bookkeeping just now. I've seen the term bookkeeping used at least, I think, two **[21]** different ways in banking. Perhaps you can help me on that. I think I have seen it used one place, something general bookkeeping. A. General ledger

Q. General ledger? A. Part of general ledger bookkeeping, which is a computer service offered to, depending on the size of the bank as to how extensive it would be. Somebody might

have 25 general ledger accounts, some might have several hundred general ledger accounts. That is a service at the present time we do not offer so, I could—some banks do. We do not at this time.

Q. Is there any other type of bookkeeping done for banks on the computers? A. You mean that we do not offer; is that what you are asking me?

Q. I was just wondering, I'm trying to clarify my own mind, perhaps. I've seen the same kind of bookkeeping referred to in two different terms. That's why I'm confused. Is there anything other than general ledger bookkeeping in banking? A. Well, now, of course, basically, using the term in its basic form, any kind of accounting or record-keeping would be bookkeeping. You're doing bookkeeping when you're doing demand deposit accounts and go one step further and post **[22]** general ledger entries, accruals, the entries to be posted and send them back to them. I can't think of anything else, unless you have some specific item.

Q. No, I'm trying to clarify the meaning of these terms in my own mind. A. It's probably the same term, two different terms really meaning the same thing.

Q. Insofar as someone using your computer services, do you at Trust Company supply the form on which information is reported or sent in to the computers? A. Yes.

Q. Is there any—excuse me, go ahead. A. Well, of course, it's less expensive to them to use the regular soft wares, as we know it. In some cases they prefer different type statements and so forth, which we do use when we draw up statements for them.

Q. That would be the statements coming out after the information has been run through the computers? A. Right, that they mail to their customers.

Q. Starting at the, I guess, what you would call maybe the input side of the computer operation, is there any necessity for the forms on which information is reported to your computer to be standardized in any way, to your knowledge? A. You're going to have to restate that. I'm not quite **[23]** sure what you are asking.

Q. Let me put it a different way. Do the banks which use your computer service, do they report information that's going onto your report, on your computer? Do they all use the same type of forms in making such reports? A. Well, I think you can, in general, yes, most of the time you pick it up off documents that they send to you and inasmuch as a check is a check, then, yes, they would use standard type information. That could be different size or different colors, or different qualities of paper, but it's generally the same type of documents that you pick this information up from. And on your monthly, generally your information can come in any way and you pick it up and put it in the necessary form to get the information on your computer.

Q. I think the next item you mentioned was investment advice. Could you tell us a little bit more about that? A. Well, I am thinking mainly of our bond department that sells Government Bonds, government agencies, municipal bonds of various types and so forth and keep in touch. It depends on how much they use, the bank uses. They may buy all of their bonds from you, may buy some, or they may on occasion buy bonds from you. And in that, other than actually selling, investment advice would come under, we have a computer service called portfolio analysis and accounting which gives them an up-to-date listing, monthly, of all their **[24]** bonds, the present market price, accruals on it and tells them what coupon, what interest is due and when, so forth. It's a combination advisory service and accounting service, bookkeeping, if you would.

Q. Is there a fee charged for the first type of advice? A. The portfolio, the PWAS service is a computer service, yes, fee in-

volved. Other than that, there is no fee involved other than the margin or mark-up on the bonds, whatever it might be, which would not be a fee itself.

Q. I think you also mentioned safekeeping. A. Safekeeping of securities. Most of our correspondent banks would prefer to have their securities held in one single location or maybe two at the outside. All the securities or the securities that they buy or purchase would be shipped to this particular bank to be placed in safekeeping. Sometimes they have one safekeeping account, sometimes two. Maybe one here and one in New York. These securities are domiciled there and processed through the collection of coupons, et cetera, and so forth, until they are either sold or they mature and this is a service that is rendered free of charge except the analysis charge, balances copy.

Q. I think the last thing you mentioned was, if I recall correctly, specialized services. I think you also mentioned international services. Could you give us an idea of the specialized services that you have in mind? **[25]** A. Well, it could be through actually any department in the bank, in a department they could have a customer interested in either importing or exporting. It could involve letter of credit, it could involve developing a market in some foreign country, it could be through your corporate trust department. It could be they have a customer who needs somebody to act as a transfer agent or registrar. It could be in the trust department they may have a customer who needs to place funds in escrow or some various fiduciary capacity of the trust department.

Q. Do you have any correspondent banks that do not have trust departments of their own? A. Quite a few. Most of your small banks do not have trust departments.

Q. Do they refer trust customers over there or customers of theirs who are, seeking trust services, are those referred to your department? A. Some of them are, yes.

Q. Do you have any correspondent bank accounts in the general Atlanta area with banks that do not have trust departments? A. Yes, sir, you're speaking of major Atlanta?

Q. Yes. A. Metropolitan?

Q. Yes. **[26]** A. Yes.

Q. Have any of those correspondent banks referred trust customers to you? A. Yes, sir.

Q. In those cases, have you sent or had someone from your trust department go out and visit with the correspondent bank's customer or is there any policy in that regard? A. Well, it depends. Sometimes they call and set up the meeting and they actually bring their client in that needs this particular service or they might set it up so one of our people might call on them. It depends on the situation. Are you saying would we call on them direct?

Q. No, would you go out to the correspondent bank to meet with his customer who is seeking trust services? A. Sure.

Q. I don't know, you have mentioned this term already, and earlier, but are you familiar with the term fed funds? A. Federal funds, yes.

Q. What does that mean? A. Well, it's really a misnomer now, but in the beginning it was where a bank who had excess reserves on deposit with the Federal Reserve Bank could sell those by the day to another bank. It's now come to mean any bank that has excess funds whether he be a member of Fed or not. They are called correspondent funds, fed funds, but it's a vehicle of **[27]** where a bank can sell excess funds by the day as compared to investing in some treasury bills for thirty days, sixty days, or two or three days, so forth. You can actually sell funds by the day. If you have $5 million in excess reserves, Federal Reserve Bank, that you do not need today, why, there is a market available where you can sell those and for a stated

rate for the one 24-hour period. They are returned to you the following day.

Q. Would your small correspondent banks be able to participate in that operation? A. Yes, sir.

Q. In what way? A. Well, we establish a market, your normal, of course, this is probably gone by the board. At one time your minimum amount was $1 million. A lot of smaller banks never at one time had this amount. So it's now, I think, the accepted minimum is probably a hundred thousand dollars which gives them the privilege of investing this amount by the day.

Q. I'm not sure if I understand just how Trust Company fits into this operation insofar as the small correspondent banks are concerned. Could you explain that? A. Well, we make a market available to the small correspondent banks. We either buy or sell fed funds or correspondent funds whichever the case may be at the going market. In other words, they may, one day sell you **[28]** $500,000 in fed funds and the next day they might turn around and buy $500,000 in fed funds, depending on their money position as of that day. It's up to us to decide what position we are going to be in. But, we either are net buyers or net sellers, depending on our position as of that day.

[29] Q. Does that mean, then, that the small bank is dealing directly with you, rather than with the Federal Reserve Board or anyone else? A. Well, they have never—the Fed-funds market has never been through the Fed Reserve Bank or the Federal Reserve Board, that is the vehicle by which you move the money from one place to the other. In other words, suppose, as an example, maybe I can explain it this way, suppose the Trust Company of Georgia, when we at noon decided on our money position we might be net sellers of say fifty million dollars in Fed funds or five million dollars in Fed funds, then we would sell it to maybe Chase in New York, and we would wire it through Fed to make it immediately available. And

when you are selling money during the day, you must deliver it promptly, and that is the vehicle you use. And you always deal either through a bank or a money broker.

Q. Does Trust Company offer any sort of credit card service to its customers? A. Yes, sir, Master Charge.

Q. Is there any service to correspondent banks which would involve the Master Charge service? A. Well, they can either become a member of the—I believe the correct name is Southeastern Bank Card **[30]** Group, and be a member, or they can be an agent of a member bank. And we have some correspondents who are agents of the Trust Company of Georgia and Master Charge.

Q. Could you explain what is meant by an agent of Trust Company or Master Charge? A. Well, in other words, they can offer this, they can offer this to their customers without assuming any of the risks, and the credit liability will be assumed by the party they are acting as agent for; in this particular case it would be us.

Q. Do these banks have the option, if they wish, to assume the risk of that operation as well? A. If they wanted to be a member direct, yes, they do.

Q. In the case where a small bank is acting as an agent for Trust Company with respect to Master Charge, what would a credit card obtained from the correspondent bank look like? In other words, would the credit card that a customer of the agent bank receive, would it have the agent bank's name directly on it or would it have Trust Company on it? A. It would have the agent's bank.

Q. Does Trust Company have a lock-box service available? A. Yes.

[31] Q. Could you give us sort of a brief description of just what a lock-box service is? A. Well, probably have a large, generally speaking, they are larger concerns or a concern who

has quite a few invoices, which are collected in one central point. For example, if a manufacturing concern in Miami, Florida would enter into an arrangement with an Atlanta bank to have a lock-box, which means that all of their remittances would be sent to a post-office box in Atlanta, Georgia, and it would be picked up numerous times during the day by the bank they entered into the contract with. And these items would be processed immediately, thereby saving the time that it would take to come from Atlanta to Miami and back in to process. In other words, probably cut off two days' flow in the meantime on that. You just intercept checks and put them back into the systems at a more rapid pace.

Q. Would such a service be available in any way to customers of a correspondent bank? A. Well, to the extent, yes, we would—any bank would set up a lock-box plan for a client of the correspondent bank. In that case, of course, you would set one up for anybody, under normal circumstances, but the flow of funds, instead of coming into the correspondent would probably come into the Trust **[32]** Company of Georgia for the credit and advice of the correspondent bank, where it happened to be located.

Q. In that type of situation, first of all, would there be a fee involved, and second of all, how would it be paid or by whom would it be paid? A. Well, normally there is no fee involved in this. You are paid by balances, but that would depend entirely upon the setup that the correspondent bank wanted to have. In other words, if the company would maintain sufficient balance with them to pay for it, and they, in turn, could maintain sufficient balances with you to pay for it, then it would be just an analysis charge. Then, if the volume built up and it got to cost more, then, maybe you would have to ask for more balances to cover that, both ways, both from the bank and the bank from the corporate client. There could be a fee arrangement there, there could be an arrangement where they would prefer a fee rather than balances. In other words, if they

couldn't maintain sufficient balances, they would agree to pay a fee or a maintenance charge on this. It could be either way.

Q. Does Trust Company offer any pension and profit-sharing plans to corporate customers? A. Yes, we do, through our trust department.

Q. Could you, again, give us just a brief idea **[33]** of just what type of plans would be offered and how they would be offered? A. Well, suppose that a correspondent bank wanted a pension and profit-sharing or retirement plan, a pension plan or maybe a profit-sharing plan; then, our trust department would —with an actuary, would work out a plan for them, and they would have to contribute X number of dollars per year in order to service or fund this particular plan, and it would be a contract arrangement or fee involved in it. And the money would then be invested, in order to assure that as of a certain date, there would be enough money for X number of employees that would be retiring at that time. And your profit-sharing plan would be the same thing, except it would be worked on probably a percentage basis. In that, again, the money would be invested for them. All of this is on a fee basis through the trust department.

Q. Are any of these pension and profit-sharing plans, have any of them been made available to correspondent banks as such? A. Yes, each plan is tailored for that particular bank or that correspondent bank's client.

Q. Excuse me. In other words, when you say client, you mean customer of this—a corporate customer **[34]** of a correspondent bank? A. Could be anybody.

Q. Does Trust Company have any service which would involve the preparing of payrolls for corporate customers or business customers generally, let's say? A. There is a computer service that does this, and they furnish you the information, either the number of—hourly employees or salaried employees, et cetera and so forth. And you prepare either the checks for

them or you credit the account for them, and so forth, prepare their withholding forms, et cetera, that type of thing. Yes, sir, it is done on a fee basis.

Q. Are any of your correspondent banks using that service for their own employees? A. Some for their own employees, some for the employees of clients and customers.

Q. Is Trust Company in the factoring business? A. Yes, sir, we are.

Q. Could you briefly describe what is basically involved in factoring? A. Well, generally, factoring is done in two steps. First, the factor, in this case, as the Trust Company of Georgia, would pre-approve any credit or shipment of goods, and then secondly, would purchase the invoice for cash, assume the credit risk involved. **[35]** In other words, if it is a manufacturing company, and they say we would like to ship $20,000 worth of whatever they are shipping to ABC Corporation in New York, we say, "Fine, we will accept the credit, ship the goods". And we would, in turn, purchase the invoice for cash and we would wait until the normal business terms, maybe 30, net 10, before we received our money from ABC Corporation.

It is a purchase of accounts receivable is what it amounts to. There are various ways, there's other alternatives you can take on that, but basically it is a purchase of accounts receivable.

Q. Are any customers of your correspondent banks presently using the factoring service that you just described? A. Yes, they are.

Q. I think you just indicated that when you purchased the receivables, you would then pay cash to the factoring client? A. Right.

Q. How would that money be routed back to the factoring customer himself? A. Well, if he is a direct customer of ours, we would just merely credit his account with the Trust Company. If he were a customer of a correspondent bank, **[36]** then

we would credit the correspondent bank's account for the credit and advice of the factoring customer.

Q. Mr. Padgett, I would like to hand you Government's Exhibit 193, the very last one here.

Your Honor, this is the booklet entitled "Trust Company of Georgia Correspondent Banking Services." It is our very last exhibit.

The Court: The amended set?

Mr. Kinkaid: Excuse me, sir.

The Court: In your amended set?

Mr. Kinkaid: Yes, sir.

The Court: All right.

Q. Mr. Padgett, do you have any idea of roughly when this particular booklet was written? A. There's no printer's date on here, but it looks like it was about ten years ago, about 1961 or '62.

Q. Who actually wrote this booklet, can you recall? A. Well, it was prepared by a man in our organization by the name of Luke Fink, who talked to everybody concerned and put it together, and actually it is, in effect, his language, I guess is what you would say.

[37] Q. Were you personally consulted with respect to this? A. Yes, sir.

Q. Have you had a chance to read this particular booklet recently? A. When I gave it to you, yes.

Q. All right. So far as you are concerned, are the services described in this booklet, are they accurately described? A. All of them are, they have been. The only change has been really, an up-dating as far as automation is concerned, computers involving some of them. There has been one we show here, we show an industrial development department or refer

to it. We no longer have a department known as business and industrial development. It's done possibly by the officers in the national division rather than being departmentalized.

Q. What do these officers do today? Would it be the same as described in here for the previous department when it was in existence? A. Originally, yes.

Q. Would those be the only corrections you would be making in this as of today? A. I would think so, other than some of the nomenclature might have changed, but virtually it is the same.

Q. Could you please turn to page 7 of that exhibit? A. Yes, sir.

[38] Q. About the middle of the page there is a notation, "Trustee," under pension, profit sharing, thrift and other employee benefit plans. Could you tell us what the thrift plan would be? A. I'm sorry, I'm afraid I'm not—I think I know, but I would rather—I'm not sure.

Q. Are there any other employee benefit plans that you know of at the moment that would be covered under this particular service? I've got to rephrase that, that's confusing. When you say Trust Company acts as a trustee under pension, profit sharing, thrift and other employee benefit plans, my question really should be, can you give us an example of other employee benefit plans referred to? A. Well, I think one might be the plan which the professional men, doctors and attorneys, use, it's called what, the Keough Bill; is that right? It could be that, where professional people ask to set aside a certain amount of money each year for their own profit sharing or pension, if you will, so forth. It could be a plan like that or specially devised plan for an individual or group rather than corporations, et cetera.

Q. Would that plan you just mentioned, for professional people, would that be available to professional people, customers

of your correspondent banks? A. Sure, anybody. It's on a fee basis.

[39] Q. Now, could you turn to page 19. Now, in the first paragraph on that page there are several different things. It emphasized some which I believe we have already covered this morning. I'd like to just go through these and the ones we don't seem to have covered, we would like to ask if you will just sort of spell this particular thing out a little bit more for us.

What would the term "Taxes" mean in this context? A. I think what it means were that our expertise or knowledge, if you will, and any particular change in the tax laws, and so forth. In other words, something new and different comes up, you have some question about it. They probably do not use a distinguished tax firm like we do. We would make this available to them, tell them what we are doing, this type of thing, what ought to be done, what you ought to look at or refer them to a tax expert in their given area that could help.

Q. There is one before that, "Check Processing and Bookkeeping." Would that be something more than just your computer operation? A. Well, of course, back at this time there were not as many banks using computers as there are now. Probably referring to, we would probably send in a team of operation experts to review their bookkeeping system to see if it could be helped. In other words, if they needed to change to a **[40]** different type of equipment, and so forth.

Q. Would that be necessary today with banks on the computer setup? A. Not really, but it could be very important to a small bank that's still using manual bookkeeping machines if they wanted to upgrade and change, and so forth. I would say you would have fewer calls now than you did then. If that answers your question.

Q. What would be in the context of this paragraph the kind of advice that you would be offering on the next item, namely installment credit? A. Would be anything from how we train

people to make installment loans, forms we use, methods we use, collection methods we use or forms we use. How we evaluate credits, the terms, 24, 36 months, et cetera, and so forth.

Q. Are you just—I think you mentioned training. Is there any kind of training available at Trust Company for employees or officers of your correspondent banks? A. Certainly.

Q. What would be some of them? A. We don't conduct formal classes per se. If a correspondent called and asked us to train a teller or someone in the personnel department, credit office, installment lending office, we would do that.

Q. One item in here is called "Audit Systems." What **[41]** would that involve in terms of offering advice to correspondent banks? A. It could mean that we could, would tell them how to, how they should conduct a director's audit, how they should trace their loans, how they should trace savings accounts, and so forth. Just as in most of your audit systems you do not actually, you know, ask for a direct confirmation on everything. But, ten loans, five, six, depending on the volume and so forth, and what is involved, internal security mainly.

Q. Now, this item, the tellers' procedure, would that be part of what you just mentioned as training tellers, or would that be something else? A. Might, might furnish them with a manual, training manual, how we train them and how we handle them, and so forth.

Q. What would be involved in giving advice on loan collection methods? A. Probably tell them the procedure we use, what we do when a loan is thirty days past due, sixty days past due. How we effect collections, what we find is necessary to convince us, to move against the collateral and so forth, repossess an automobile.

Q. How would you become involved in advising a correspondent on the purchase of new equipment and supplies? To what extent would you be involved in that sort of thing? **[42]** A. Mostly to do a feasibility study as to what type of equipment

they should use, when they should get it, whether they should purchase it or should lease it. Generally, in a full feasibility study, really, as to whether they need it, how much equipment they needed, and so forth. A lot of time there is a tendency to over-buy, when you are buying this type of thing.

Q. Does Trust Company do any leasing of equipment of this type? A. We would arrange—we would arrange to handle a lease contract for somebody. We do not lease, we do not lease the equipment per se.

Q. Right. What would be the sort of thing that would be contemplated by this term personnel assistance? **[43]** A. Well, it could be anything from helping them train personnel, helping them be sure that they are using the proper procedure in acquiring personnel. In other words, their personnel department is doing the things that is necessary to do nowadays in order to comply with the law or it could be—it could be we would assist them in finding personnel. In other words, if they needed a cashier in the bank or if they needed a lending officer in the bank or president of the bank, et cetera and so forth.

Q. Can you explain the next term, "job evaluation"? A. Oh, it mainly has to do with the classifying of a particular job, how much should you pay a branch manager and how much should you pay a monthly repayment lending officer and how much should you pay a teller, et cetera and so forth. A job, a formal job description showing what has to be done, what should be done at pay scale from the minimum to the maximum.

Q. What would be involved in offering advice on protection and insurance? A. Anything from whether they should use guards, whether they should—what their bond should be, whether they should have cameras, internal security, anything in that line.

Q. Do you have anybody available to actually **[44]** advise on securities systems? A. Well, that is not his primary job. We have a former FBI agent, who is in charge of our security. It

is just like anything else, you know, we don't have a trust man available for a particular job, but we can make him available under these circumstances, if need be. Under that case, we would make our security man available to them for that purpose.

Q. Could you turn to Page 21, please?

The last sentence of the first paragraph on that page states that: "We are always glad to share information on national and sectional accounts, and to aid our correspondents in their relations with them."

Could you expand on that for us, just how does Trust Company aid its correspondents in their relations with national or sectional accounts? A. Well, it could be that a correspondent bank would call in and say we understand that such-and-such a store would be located in our area. If this is true, we would like to have them do business with us and we would attempt to find out, first, if they were going to locate a store there; and second, recommend that they use this particular bank, and to go beyond that we would probably tell them, because we had previous experience, as to just how they go about selecting **[45]** their local bank, whether the local manager makes the decision, whether the vice-president in charge of finance makes the decision, whether the treasurer makes the decision, whether they are just actually measuring the closest bank, period. That is it. Really what they are looking for in the area and so forth.

Q. In those situations would anybody from Trust Company call on a national or a sectional account with—— A. Sure.

Q. ——someone from the correspondent bank? A. Well, that could be the case if it were important enough, but most times, if they had asked you to call on them for them, that your man would go by himself. If it were important enough, there's a chance that the president of the local bank might want to go. It really depends on what it is. If it were a chain store or a department store, he would not. If it were a manufacturing con-

cern that would employ four or five hundred people, probably the president and the entire bank board would want to go.

Mr. Kinkaid: Your Honor, would this be an appropriate point to take a little break?

The Court: All right. We will take a ten-minute recess.

(Whereupon a recess was had.)

[46] Q. Mr. Padgett, does Trust Company provide any kind of assistance with respect to correspondent banks' lending practices, as such? A. I don't quite—would you rephrase that, I don't quite understand.

Q. Well, does Trust Company help a correspondent bank in making various types of loans or in setting up procedures whereby or under which its loans are granted? A. Oh, you mean, for instance, on real-estate loans, and so forth? Your checklists, your technical procedures, yes we do that.

Q. Could you tell us just a little bit more as to the nature of that assistance, the form it would take? A. Well, generally, when there's been any change in the banking laws or any regulations by the regulatory authorities, that really change any particular receivable financing or construction loans or any technical change, why, most of your Reserve city banks will put out a memo or guideline sheet showing the changes, what should be done, this, that and the other and so on. Of course, on any specific request, we would do that on anything. If a bank had some question about making a term loan, covenants that could go in it and so forth and so on, **[47]** we would be glad to do that. But, as a general rule, unless it is some technical, drastical change, you wouldn't put out a white paper on it, so to speak.

Q. Have you ever gotten a call from a correspondent bank to the effect that it's gotten into or its loan procedures have sort of gotten into a mess, and could you give us a hand in straightening them out? A. Yes.

Q. Has that happened often, to your recollection? A. Not—no, it would be the exception rather than the rule.

[48] Q. If you can think, I'm not asking you for names of any banks in the situation where that has actually happened, can you recall what Trust Company did to help the correspondent? A. Well, generally, what you do would be send, say, a team of two fairly competent credit analysts to go in and help survey the loans and see what they were doing or see what they were not doing or needed to be done, and so forth.

Q. What do you mean by survey their loans; what would that involve? A. That would depend. You've got one or two loans you're having trouble on, and find you do have one or two, it could be they lost their chief executive officer of the bank and they are, you know, think that maybe he was a little too liberal in his lending policies and so forth, might want you to look at the entire note case, all of their loans, in which you would do that, or maybe just a certain type of loan you have a problem with.

Q. You just mentioned they may have lost their chief executive. Has that happened often during your experience at Trust Company? A. Where they would lose the president of the bank?

Q. (Indicating the affirmative.) A. Sure.

Q. And in those cases have you assisted the bank in any way in replacing the chief executive? **[49]** A. In some cases, yes, sir, tried to.

Q. Roughly speaking, how would you go about trying to resolve a problem like that? A. Well, most of your major banks sort of act as, I would say clearing house, that wouldn't be correct, they try to stay on top of the situation and know who is available, who is looking for a job of this type, and so forth, try to put the parties in touch or could have somebody that's been in the banking up in the east coming to this section

of the country, wanting to move to this section of the country. Local boys that's been off to school located on the west coast that want to come back, this type of thing.

Q. Going down the line somewhat, do you or have you had requests for help in situations where tellers or other employees of correspondent banks are sick or died, for one reason or another are not available, and for one reason or another a replacement is needed on a temporary basis? A. Generally not just one in cases like that. They can get by with one. Where you have a couple on vacation or something happens to a couple, so forth. There have been occasions, yes, where you would have to step in and furnish two, three people in one department.

Q. Have you had any request from correspondent banks to assist them in the financing of any expansion, for example, renovating their bank building or perhaps building a branch **[50]** building or replacing their equipment? A. Not any equipment. We have had some real estate holding companies who borrowed money to build a building or build a branch, and so forth. I don't recall whether any equipment has been involved.

Q. You mentioned the real estate holding company. How would that, a real estate holding company be involved with one of your correspondent banks? A. Well, it could be that they were up to their brick and mortar maximum as far as their capital was concerned. They were building a new building, new branch and wanted to borrow money. They would form a holding company, real estate holding company who would borrow the money secured by a lease from the bank for a period, given period of time, which would fund the loan.

Q. And again, how does—how would Trust Company enter into that particular situation? A. Either help them place the loan with an insurance company or make it yourself.

Q. To your knowledge, are there any banks headquartered outside Atlanta that are trying to, trying to sell correspondent

services of the type we have been talking about this morning to small banks in this area? A. Yes, sir.

Q. Now, could you identify some of these for us? **[51]** A. You mean by name?

Q. Yes, sir. A. Wachovia out of Charlotte, North Carolina National out of Charlotte, American National out of Chattanooga, Central Bank out of Birmingham, First National out of Birmingham. The Jacksonville Bank, Barnett, Florida National, Atlantic National. Your New York banks to a lesser extent, they call on small banks in Georgia not as active as the ones I've mentioned, but all of your New York banks call on the banks, Chase, First National City, and so forth.

Q. To your knowledge, do the banks that you refer to as the active sellers, namely the North Carolina and Tennessee, et cetera, banks, to your knowledge, do those banks offer pretty much the same range of correspondent services that your bank offers or do they offer more or less or can you categorize them that way? A. I would think most of them are pretty much the same with the exception, of course, of your computer services. You've got a mileage range in there, mileage factor that enters into it, that banks out of Chattanooga would be restricted as to the surface transportation, really, fifty, sixty miles. Other than that, it would be pretty much the same except maybe the difference could be in some policy as in regards to overlines and something like that. Basically, I would say they are pretty much the same. Some does more, **[52]** depending on the size, and some are in a position to do more of one thing than another. Basically, they would all attempt to do the same thing, I think I'd be safe in saying.

Q. During the past, say, ten years or so, can you recall any officers at Trust Company who have left Trust Company to become officers of small banks? A. Yes, sir.

Q. Have there been any that you can recall? A. Well, I don't know that we have had any more than anybody else.

We have had quite a few back over the years, particularly in the Florida area, back when a lot of banks were being authorized and opening down there. They were offering somebody attractive salaries and situations. Georgia during that period lost a lot of men to Florida.

Q. Generally speaking in those situations, were the people who left the kind of people that Trust Company would have rather had stay; in other words, were they—— A. Yes.

Q. ——caliber people? A. Yes, sir.

Q. During the time that you have been working in the—or in this correspondent area, Trust Company, has Trust Company assisted in the formation of any new banks? A. Yes, sir.

Q. Could you guess as to roughly how many Trust Company **[53]** has assisted or has helped in the formation? **[54]** A. Fifteen to twenty.

Q. Where would these banks be located? A. Mostly in Georgia and Florida. A few in other states, but the majority of them in Georgia and Florida.

Q. Just how has Trust Company assisted in the organization of these banks? Now, of course, I'm not trying to suggest that they all have been—follow the same pattern, but could you give us examples as to the type of assistance that Trust Company would provide in connection with the formation of a new bank? A. Well, I think it mainly would be in the form of counseling, really, as to what they should do, when they should do it, et cetera and so forth. That is about all anybody can do at that stage of the game.

Q. Generally speaking, is there any particular stage in the formation of the bank where you folks have become involved? A. Whoever gets in on the ground floor usually would stand the best chance of ending up with the business, once they received their charter and opened for business.

Q. Well, do you or have you become involved with the new bank, for example, at the stage where people are just getting together as organizers or is it at a later **[55]** stage or—— A. Well, at all stages, but as far as new business is concerned, you prefer to—the sooner the better. In other words, just generally what happens is, you have a town with, say, one bank and a group of local businessmen decide that they want to organize another bank or the community could support another bank or the need was there for another bank then, they generally let it be known that they are of this bent of mind, and those who are in position to help them is maybe the local bank uses two Atlanta banks, and that leaves two or three other Atlanta banks that are not involved, that are in a position to help them, and whoever would really do the most or offer to do the most or be of the most help at that particular stage would probably end up with the business, once they are in business.

Q. When you say business, do you mean correspondent account at that bank? A. Yeah, well, that's all it would amount to.

Q. Do you assist in preparing the application for the charter, for example? A. If need be, yes.

Q. Generally speaking, what would that sort of assistance entail? **[56]** A. Well, mainly, mostly things of a technical nature, most founding banks will have a local lawyer as the incorporating secretary and they need very little help. Maybe projections, you know, the first two- or three-year figures, this type of thing and so forth. But, it is in the technical sense mainly.

Q. At that particular point, would there be any assistance in terms of finding officers to run the bank or people to work in the bank? A. You have to, in applying for a new charter, either state or national, at some stage of the game, you have to list not only your directors, but your officers, and that is part of the approval. In other words, at that time they approve the chief executive officer and the top two men in the bank,

so you must have names to submit to them at that time, and that is a very important part of it.

Q. Have you assisted these to-be-formed banks in finding the chief executive officer at that time? A. Yes, sir.

Q. You mentioned that the directors have to be identified to the regulatory agency. Just how important is that? A. You mean how important——

Q. Or is that something of real importance at **[57]** that time? A. Oh, yes. Well, that is part of the application originally, the greater part of the application goes into the background of the directors of the bank, and their prior business connections, just general background information on them. It plays a very important part in it.

Q. Has Trust Company or have you on behalf of Trust Company assisted, been involved in any way with that particular matter, namely, the selection of directors for the new bank? A. Well, not to that extent. Most of the time you have, say, a group of ten men, which are your new nucleus, and at that stage they have all decided that they want to be directors of the new bank, and it is pretty well set at that stage. It could possibly involve some advice and counsel as to the type of business that one of them might be involved in, or the background of one of them might not be of the type that ought to be in the thing. Other than that, that would be about all you could do.

Q. Have you been asked by any of the organizers to check out the backgrounds of any of the directors for purposes of identifying them to the regulatory agencies? **[58]** A. Not really, because they are local—these fellows know more about themselves than you will ever find out about them, and if not really —we are talking about local banks now in small communities. Most of them know each other pretty well over a long period of time, thus the reason for the close association.

Q. Would that also be true for suburban areas of metropolitan Atlanta? A. I would think so, because to begin with, you

have to—they have to be a right close-knit group and usually over an extended period of time, and they have to be able to get along. And organizing a bank is just like anything else, you turn to those who you know and those who think like you think, and so usually they are pretty well known to each other.

Q. Have you had occasion to assist any of these new banks in selling their first stock issue? A. Well, really, selling it is no problem. They are usually over-subscribed. So you might offer to—usually they restricted it to a set amount. In other words, no one person will have over X number of shares, X number of dollars and so forth. You might offer to finance it for them over a given period of time, if necessary, but really not much of that is required, and selling it is really—hadn't been a problem. They are **[59]** usually over-subscribed, a man subscribed to a thousand shares probably ends up with maybe three or four hundred, maybe five hundred shares.

Q. Now, once the bank has its charter, what have you done or have you done anything to further assist the new bank in terms of actually opening up for business and conducting a banking business? A. Well, a lot of times you would help them pick their location. Of course, when the charter application goes in they must have the location, not picked, but under some option, so that it can be acquired. Help them decide what would be the best location, traffic patternwise, et cetera. Help them acquire and train personnel to run it, other than the top two people. Might send a man down to help them decide what they needed in the way of forms and pre-opening advertising, this type of thing and so forth. Just anything that needs to be done, really, and there's a lot to be done in opening a new bank.

Q. Have you had any of these new banks that you have assisted in forming request that you sell them any loan participations in their early days? A. Yes, because in the beginning, of course, they have deposits coming in and the loan demand is rather slow. Did you ask me—you said had we had requests?

[60] Q. Yes. A. My answer was yes.

Q. Okay. Have you had any requests from a correspondent bank that is in existence in terms of their wanting to seek approval for an additional branch office? A. About the only—well, that's really a rather simple procedure. About the only thing that they might ask, there again, would be of a technical nature. The application is pretty simple. And, if they are properly capitalized and can build the building and so forth, really, there's no great problem there other than just filling the need, or that would be about the extent of that.

Q. Incidentally, have any of the banks that you have helped get started, once they have actually started to operating, have any of them written or called you and reported on generally how they are doing? A. Well, not really. You are in pretty close contact with them, and of course, as you know, the regulatory authorities require call statements at least twice a year and more, depending on where the bank is located, the site of the bank and so forth. This is routine, that these are sent out to all of your banking friends; you are in pretty close contact with **[61]** them. They tell you, you know, what their deposits are and how they are doing, this, that and the other. And of course, they are right anxious to get out of the red and in the black at that stage. They keep you posted on profits, but it is an informal thing. If you don't call them they might—if you don't call them about some other matter, they might not take the trouble to inform you.

[62] Q. Generally speaking, were you at that time, in the bank's history, would you be in more frequent contact than later on when it's running smoothly, well established? A. No, in the beginning we are a little closer in contact because of the day-to-day problems. Everything is new and different, they get hit with an awful lot at one time. So, the older they are and more experience they have had, really, probably the less contact you would have with them in that respect.

Q. Have you ever had occasion to purchase any capital notes from any of your correspondent banks? A. On occasion, yes.

Q. What type of institution generally speaking, purchases such capital notes? A. Well, an institution could be insurance companies or other banks, or, of course, a lot of them sell them to individuals on the local scene.

Q. Is it difficult or has it appeared difficult for you from your experience for small banks to place capital notes of this type? A. I wouldn't say it was difficult. It depends on how hard a bargain they're trying to drive, what sort of rate they want to get. It's available. Now, as to how readily available, I would have to say as compared to what, but it is available.

[63] Q. Once the bank is in operation, have you ever gotten any requests for assisting in a promotion like trying to increase the bank's savings accounts or perhaps trying to get its demand accounts up higher? Have you been asked for any assistance with respect to those types of promotions? A. Yes, on occasion we have. It would depend on the nature of the request as to how we would comply with it, what we would do. Maybe if it was advertising, we would furnish them the mats that we would use for radio transcript and ads, so forth. If it were a new business, office call problem we would tell them how we do, what we do under the circumstances and suggest they plan on that.

Q. I guess going back to something that we discussed quite a while ago, about how many banks does Trust Company—for about how many banks does Trust Company administer pensions and profit sharing plans, if you happen to know? A. Probably more than I can recall rather hurriedly, eighteen or twenty.

Q. Is this something that has been done for banks for over a long period of time or is this something that is a more recent development? A. Some of them have been in existence for a good while. But, I think that to answer your question, I think

this has become more popular, more in general use in recent years as a tool or measure of not only paying people better **[64]** but holding them. True, with all fringe benefits. It's more popular now than it was ten years ago.

Q. Do Trust Company officers or other personnel ever meet with the directors of correspondent banks? A. On occasion, yes, sir.

Q. Could you give us an example of the type of occasions on which that would happen or has happened? A. Well, generally, it's when you are involved in some type of new undertaking. Portfolio accounting and advisory service, for instance, usually in smaller banks involves your directors. They might ask that you present this to the Board of Directors or might have to do with an investment program or might have to do with pension and profit sharing program that affects all of it. In other words, the Board would have to pass on it and then they will ask you to present it to the Board of Directors. It is an opportunity we welcome but we do not have very often.

Q. I'd like to go back to one area that we covered a while ago, namely, the seeking of advice by correspondent banks. I believe you did give us some examples. Could you just sort of, if you could, give us sort of a—just a general picture of the various types or the range of things on which your correspondent banks seek advice from you? A. You mean outside of the normal routine banking inquiries?

[65] Q. Well, even just taking that, what do you mean by routine? You mean that's routine? A. Well, of course, what we would consider routine a layman wouldn't consider routine. It could be anything from an overline or some question about a particular loan or problem they were having locally, locating a business or could be a tax problem, could be an investment problem, could be something entirely personal that he would ask you to do because of where you were located. It could be he'd ask you to get him hotel accommodations for the Georgia-

Georgia Tech week-end, could be anything. Some friend, his daughter is in town, needs a job. Some kid finishing school needs to be interviewed. They ask of us the same favors you would ask of your associate colleagues if you needed something in another town with some firm you were associated with and doing business with.

Q. So far as advice being sought by correspondent banks from Trust Company, is this advice always sought by the correspondents, or does the Trust Company have any type of program of proffering advice to its correspondent banks? A. We don't proffer advice nor do we advise on a continuing basis except in maybe an investment area or the Trust investment area; whereas, you enter into a contract to oversee a loan portfolio, you review them monthly, quarterly, daily, maybe daily, depending on what they are. Other than **[66]** that, why, I think, the answer to your question would be, no. We love to give advice but you can only give it when you are asked.

Q. Do you, for example, have a program for keeping your correspondent posted with respect to your own policies or practices? A. Well, we are not—our policies and practices are not a secret but we have no permanent or on-going way to put them before these people at all times. We have a correspondent-conference that used to be every year, now it's every other year, at which time we very frankly state our policies, how we feel about what is going to happen. If asked, we would tell, but you just don't pick up the telephone and say, "Joe, let me tell you what wonderful things we are doing today."

Q. Even getting more specific than just general practices and policies, how about Trust Company loan policies or loan practices? Is there any continuing program of any kind to keep your correspondents advised as to what you are doing in the lending area? A. Not really, because this is not even—what we like to do and what we want to do is not germane as far as they are concerned. When they want something and need something, that is the most important thing to them. They are

neither interested nor inclined to listen to our policies at a time like that. It's really—I mean, if they ask, "What **[67]** are you doing about so and so," we'd be glad to tell them but they don't call up and say, "What is your policy with regard to a ten-year term loan to a textile concern?" If that is what they want, they just say, "Look, here's what we need." So, we have no way of, you know, letting our policy be known on any given thing.

Q. Incidentally, is there any difference in—I can't think of the word—is there any difference among your correspondent customers in terms of the number of or types of services they take from you? For example, I've seen the term primary correspondent used, what is a primary correspondent? A. Well, most banks have at least two or more relationships. They are the one where they give their first loyalty and percentage, why, most of their balances to and so forth would be the primary correspondent. The one they use most frequently, the one they would think of calling when anything comes up, would be their primary correspondent.

The secondary would be where they maintain an account and maybe use it for investment purposes, so forth, on occasion call on you, and so forth. But, generally, they have a primary correspondent and secondary correspondent.

Q. Well, looking at just your primary correspondent, who would maintain the good balances with you that you referred to and take a great many of your services, does that relationship you have with them in any way enable Trust Company **[68]** to exercise any control over the primary correspondent? A. No, sir.

Mr. Hodgson: If Your Honor please, Mr. Kinkaid has been leading Mr. Padgett all morning. We don't have any objection to him asking what would he do, when he asked him about control, but we insist that the word be defined before the witness answers. I'd like to pose an objection.

The Court: Yes, I think the objection is well taken.

Mr. Kinkaid: Pardon, Your Honor?

The Court: I think the objection is well taken. As I understood Mr. Padgett's definition, the definition worked in the different direction from that in which you are using it. A large bank might be the primary correspondent or secondary correspondent of the smaller bank. He didn't use the term in the sense that there is a group of smaller banks which are primary correspondents of the larger or of the Trust Company. I understood his definition was the primary correspondent is the bank which the smaller bank turns to most frequently for advice. The secondary bank or correspondent is the one to which they may have an investment account and then if it needs some other advice or something, it may turn to it. It wasn't in the sense of the flow from a big bank to the little bank.

[69] Mr. Kinkaid: Right. Now, I see exactly what—yes. I had it turned around in the question.

By Mr. Kinkaid

Q. So far as those correspondents which consider you their primary—use you as their primary correspondent account, does that relationship between you and those particular banks in any way put you in a position or give you any ability to influence what those banks do in their own banking business? A. None whatsoever.

The Court: I think that is a real conclusion, if they value—if they valued the advice of the Trust Company and take it, obviously that is a method of influencing their conduct, because they asked for advice and presumably they intend their conduct to be governed by it. So, I'm not sure that you and the witness are on the same wave length on this question.

Mr. Kinkaid: Well, in terms of the advice they seek, I think you are perfectly right; they wouldn't be seeking advice if they didn't want to listen to it.

The Court: If they didn't want to **[70]** follow it and be influenced by it. What you are asking him, if they asked advice, do they have to take it, and I think the answer is obvious: no, they don't have to take it.

By Mr. Kinkaid

Q. Mr. Padgett, was that what you had in mind when I asked the question and you gave the answer? A. Well, in strictly referring to banking matters, financial matters, then most of the time they will—if they didn't want your advice, they wouldn't ask for it. When they do ask for it, they do take it. Now, as I understood the other part of your question, what influence I would have over them in any matter outside of banking, it is absolutely none. Because, as we all know, and whether you know or not, most of your correspondent bankers are right independent, influential, well-to-do, knowledgeable people, and they make up their own mind about whatever they want to. And, so in banking, I mean in matters pertaining to banking, usually they do accept your advice, but on other matters, they may ask your advice and then not accept it.

The Court: All the things you have been talking about this morning are banking matters, aren't they?

A. Yes, sir.

[71] Mr. Kinkaid: Your Honor, excuse me just one minute, please.

By Mr. Kinkaid

Q. Let me try, if I can, to set up a definition of control. Let me define it as the ability to dictate the policies and practices of a bank. Now, using that as the definition, would your relationship with those banks that treat you and consider you their primary correspondent, would that relationship put you in a position to exercise control, as I have just defined it?

Mr. Hodgson: If Your Honor please, I have no objection to this question if this answer is responsive only to that question,

so long as Mr. Kinkaid's definition of control is recognized as having had no substance created for it in this case, or, indeed, in any other area I know of. But, if he just wants to ask that hypothetical question, I have no objection.

The Court: All right. With that understanding, you may answer.

A. Would you repeat it now?

By Mr. Kinkaid

Q. Okay. We have got a definition of control as meaning the ability to dictate policies or practices of a bank, and the question is, using that definition, does **[72]** your relationship with those banks that use you as their primary correspondent put you in the position to exercise that kind of control? A. No.

Q. Mr. Padgett, are you familiar with recent amendments to the Bank Holding Company Act that were passed, as I recall, in late 1970? A. You would have to be more specific than that, and name them. There have been some changes.

Q. Well, for example, are you aware that there was an amendment to the Bank Holding Company Act in late 1970, which added the so-called controlling influence test to definition of subsidiary? Is that familiar to you at all? A. I have read it. If you want to ask me a question about it, ask me, and I will tell you.

Q. Only if you are aware, if you are aware of that particular amendment. A. Are you talking about Regulation Y, the look-through?

Q. I can't keep these numbers and letters straight; that does sound familiar. Well, this would be the amendment which states now that if Bank A has the power to exercise a controlling influence over the management or policies of another bank, then the second bank is or **[73]** can be found to be a subsidiary of the first bank.

Are you familiar with that? A. I am not familiar enough with it that I would want to testify under oath, I am afraid. I am sorry.

Mr. Kinkaid: Your Honor, I have no further questions.

Thank you very much, Mr. Padgett.

The Court: Are you all ready for cross-examination?

Mr. Hodgson: Sir?

The Court: Are you all going to have any cross-examination?

Mr. Hodgson: Yes, sir, indeed we are. I don't know what Your Honor's lunch plans are.

The Court: I am going to have to suspend in about two or three minutes for a three-judge hearing and I expect, in view of the time, we had better not allow you to commence at this time.

We will suspend until 2:00 p.m.

(Whereupon luncheon recess was had.)

[74] After Lunch

The Clerk: Mr. Padgett.

Cross-Examination

By Mr. Hodgson

Q. Mr. Padgett, in Trust Company's way of doing things, I believe that your branch operations are in a department or division separate from you; is this not right? A. Right.

Q. Sir? A. That's right, yes.

Q. What do you call it over there? A. Branch administration.

Q. And I believe that Trust Company Associates is your holding company; is that right? A. That's right.

Q. And its administration is likewise separate from your department or division? A. Right.

Q. And who runs that? A. Who runs which one?

Q. Who runs Trust Company Associates? A. The chairman is Bill Bowden.

Q. Who actually administers it? **[75]** A. Bill Bowden and the executive vice president, Evans Bruner.

Q. Evans Bruner is executive vice president? A. Right.

Q. He handles it daily, on a daily basis? A. Well, to the extent that the chairman delegates that, yes.

Q. With respect to correspondent banks with which you enjoy relationships, I believe you said there were about 452 of them; is this right? A. Yes.

[76] Q. Do you and your department routinely and systematically receive any kinds of reports from them? A. (Witness shakes head negatively.)

Q. You have to speak up, because the reporter can't take down—— A. No, sir. Can you hear that?

Q. I didn't mean to be rude, Mr. Padgett. A. No, I——

Q. You nodded your head and he can't pick that up. A. I am sorry. Somebody else complained about not being able to hear back there while ago, I will speak up.

Q. Do you get any kind of management performance reports from them routinely? A. Get any——

Q. From your correspondents? A. No, sir.

Q. Do you get any kind of reports on credit situations and past dues from them? A. Not unless we are involved in it with them. You talking about routinely?

Q. Routinely and systematically. A. Not unless we have money in it, no.

Q. You do not. Do you receive the same sorts of [77] reports then, that, I presume, your branch supervision division receives from its branches? A. Would you restate the question?

Q. You do not receive the same sorts of reports from your correspondents as your branch supervision division receives from its branches; is this right? A. That is correct. No, we do not.

Q. You don't give your correspondents, then, routinely and systematically any analyses of information comparing deposits, earnings and expense ratios, and other indices of effective performance, do you? A. Would you restate the question, please?

Q. You do not furnish to your correspondents, routinely, analyses of data and statistical information comparing deposits, earnings and expense ratios and other performance measurements, do you? A. No.

Q. Do you routinely distribute to your correspondents any operating and credit guidelines as are done for branches? A. No.

Q. Do you have any advisers who regularly sit on their boards of directors? A. On whose boards of directors?

Q. Correspondents' boards of directors. [78] A. No.

Q. Excuse me. Mr. Padgett, in these instances, I am talking about those for which you are responsible. A. I want to be sure to answer——

Q. Righto, your 452 babies. A. Right, I understand you, and the answer is no.

Q. Do you offer to your 452 correspondents or any numbers of them blanket insurance coverage for their group, this to include such things as fidelity insurance, safety-deposit insurance, extended coverage and liability insurance? A. No.

Q. Do you offer participation to your correspondents, officers and employees in your Trust Company's own pension and profit-sharing and other incentive plans? A. In our plan?

Q. Yes, sir. A. No, we do not.

Q. Do you offer to them any other variety of portable benefits to enable them to take those benefits with them when they move from one place of employment to another? A. No.

Q. Do you maintain any pool of personnel to meet your correspondents' problems caused by absences, peak [79] periods, illnesses, vacations and the like? A. No.

Q. Do you routinely and systematically furnish to your correspondents permanent personnel, such as presidents, cashiers and the like, to replace losses and to supply their growth needs? A. State the question there——

Q. All right, sir. Do you routinely and systematically undertake to furnish to your correspondents personnel managers, presidents and cashiers and the like, to replace their losses and to supply their growth needs from your own personnel? A. Well, now, yeah. Well, you didn't say that before. No, we do not.

Q. Do you ever provide to your correspondents a service of periodic and surprise continuing internal audits of their operating procedures to disclose fraud, to ensure that they are complying with legal requirements and the like? A. No.

Q. Do you receive from them routinely and systematically any of their budget and performance projections or goals? A. Not routinely, no.

Q. How do you ever receive such? [80] A. Well, there may be an occasion where someone presents this to you, or tells you about it, or hands it to you, or mails it to you, or it might be in the annual report or in general correspondence, but by routinely, do you mean do they all do this?

Q. Right. A. The answer is no.

Q. With respect to those which you do receive casually, as I suggest you answer it, do you provide a performance review of

those goals against actual performance? Let me put in a little easier and less formal terms, Mr. Padgett.

Suppose you receive casually budget and performance projections of a correspondent bank. Do you then, routinely and systematically, review their performance against those goals at a later date? A. Not routinely, no.

Q. Do you provide for your correspondents any standardized general-ledger accounting systems? A. Not at the present time, no.

Q. Do you provide routinely the same complete advices of the changes in law as, for example, let's say changes in Regulation Z in the same way as you do for your branches? A. Not routinely, no.

[81] Q. Do you prepare income-tax returns for your correspondents, their own income-tax returns? A. If asked, we would help with them; we do not——

Q. Do you allow any of your correspondents to use the name Trust Company or Trust Company Bank? A. No.

Q. Do you allow any of your correspondents to use your logogram, the blue, hollow 'T'? A. No.

Q. Do you allow any of them, in their general advertising, to advise the public that they are affiliated or connected with the Trust Company system? A. Restate that, please, sir.

Q. Do you ever allow any of them, in their general advertising, to hold themselves out as being a part of Trust Company's system? A. I don't know if it is a matter of allowing, if they wanted to run an ad and say they are a correspondent of the Trust Company of Georgia, we would have no objections to it. Is that what you are trying——

Q. Anything more than that, have you ever allowed them to do? A. Well, there is nothing more than that we could do, really.

Q. Did you allow the little bank at Sandy Springs to use your name? **[82]** A. Yes, it was a Trust Company of—I believe it was a Trust Company Bank of Sandy Springs; was that it?

Q. Yes, sir. Did that bank—was that not the bank that was subsequently merged into Trust Company? A. Right.

Q. In which this Trust Company associates—— A. Now, you asked the question while ago, you said correspondents; you didn't say anything—we were not talking about affiliate at that time.

Q. Yes, sir. If you are going—you considered Trust Company of Sandy Springs to be an affiliate? A. I believe at that time they were—we owned, I believe we owned 5% of the bank, did we not, prior to the merger?

Q. Yes, sir, I believe so.

And that was the bank which was subsequently merged into Trust Company of Georgia? A. It is now a branch, right.

Q. And is now a branch? A. Right.

Q. Do you routinely and systematically have or offer to, or even offer to staffs of your correspondent banks, the opportunity to attend training schools and programs such as officer trainee programs, credit programs, law programs, these sorts of things? **[83]** A. Other than through the—what might be conducted at the correspondent conference, no, not routinely.

Q. In other words, in the sixteen particulars I have mentioned, at least, you do not furnish the same management and assistance as you do for your branches; is this not right? A. Correct.

Q. Have you ever tried to sell your correspondent services to the Citizens and Southern National Bank or any of its branches or affiliates? A. I can't say that I have ever tried to sell our services to any C & S branch or affiliate. I have been honored to have accounts from C & S banks by virtue of merger acquisitions over an extended period of time. I can remember

two. For instance, Newnan, Georgia; for instance, Austell, Georgia, for, you know, over a period of time there after it was —became part of the system. I can't say that I have ever solicited any business from them, no, sir.

Q. Have you ever solicited any business from the Citizens and Southern Bank of Chamblee? A. No.

Q. Even when its name was the Chamblee National Bank? **[84]** A. No.

Q. Why not? A. Well, I just had better things to do. I don't mean to be facetious; I didn't think I would get any business there, and I didn't quite know how to answer that.

Q. I wish it were a facetious question, but it is not, and it is because it was a C & S bank; was it not? A. Pure and simple.

Mr. Hodgson: No further questions, Your Honor.

The Court: Redirect?

Mr. Kinkaid: Your Honor, we have no further questions for Mr. Padgett.

The Court: All right. You may come down.

Mr. Hodgson: Judge, may I express a concern at this time about duration of testimony? I hope things will go faster thus far we are through one witness in two hours and twenty minutes. I simply wish to make my position on it, because we have a good bit ourselves.

The Court: Mr. Kinkaid said he could **[85]** finish in three days, so I am not worried.

Mr. Hodgson: All right, sir.

Mr. Stern: Your Honor, at this time we would like to call William Farr, III.

WILLIAM FARR, III,
having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stern

Q. Would you state your name, please. A. William Farr, III.

Q. Where are you employed, Mr. Farr? A. First National Bank of Atlanta.

Q. What is your present position? A. I am manager—excuse me, manager of what we call our Southeastern Division.

Q. And what does that division entail? A. This is the division of the bank that is responsible for our bank's business in the nine Southeastern states, with the exception of the city of Atlanta.

Q. When you say your bank's business, what did you mean by that? A. Well, account relationships, loan relationships, general banking services.

[86] Q. What is an account relationship? A. Well, let's say a checking account.

Q. All right. Now, you say except in the city of Atlanta; you do nothing then that involves anything within the city limits? A. Well, with one exception. Any correspondent banking relationships we would have in the city of Atlanta.

Q. All right. What is your—— A. Or let's say in the general Atlanta area.

Q. Okay. And your department oversees all of that within the Atlanta area? A. Yes.

Q. All right. Are you the head of that department? A. Yes.

Q. So what is your relationship then to the correspondent services provided by your bank in the Atlanta area? A. Well, they all fall in my division.

Q. All right. And you are primarily responsible for that? A. Yes.

Q. Okay. Did you mention the phrase "corporate business"? Did I hear you say that? **[87]** A. Not today.

Q. I am going to ask you whether the phrase means anything to you. A. Corporate business?

Q. Yes. A. Yes.

Q. What does it mean? A. It means business from corporations, really, we use it in the framework of corporations, partnerships, any commercial enterprise, other than individual accounts.

Q. Okay. When you use it in reference to what your department does, what does the meaning of that phrase have for you? A. Well, I would say any account relationship, loan or so forth, from a commercial enterprise, something other than a corporate bank or an individual, personal account.

[88] Q. These are dealings between your bank and corporations which are technically customers of yours? A. Yes.

Q. What types of services are primarily involved in this? A. In the corporate end, we can start with checking accounts, loan relationships, services from our trust department which we may assist in the sale of data processing services, corporate type services, registrar, transferee.

Q. And these are primary services in the corporate end? A. I think so.

Q. In regard to correspondent services, what territory did you say you cover with that? A. We have nine states, Virginia, the Carolinas, Florida, Georgia, Alabama, Mississippi and Tennessee.

Q. Now, does your bank furnish correspondent services outside this area? A. Yes.

Q. The number of accounts or total volume of business, let's say, even if a dollar volume, in terms of that, what percentage of your bank's total sales of correspondent services is done in the region you oversee? A. I really can't truthfully give you an honest percentage. Let's say the great majority.

[89] Q. All right. A. By far.

Q. Do you have a rough idea as to how many banks in Georgia you furnish correspondent services to? A. Let's say several hundred.

Q. Okay. Now, what do you do? What does your department do with respect to correspondent services in general; do you simply solicit the sale of them? Do you manage the furnishing of them, or what? A. We—as I say, we do both. We do have certain departments that do support us. In other words, we have some eleven offices in our southeastern region that are responsible for various territories. They are drawn geographically. They are responsible for the solicitation of new accounts, the solicitation of existing business. We use other staff departments such as data processing. We don't physically do data processing in our department. A separate department does that under our direction.

Q. With regard to data processing, is that a correspondent service? A. Yes.

Q. Another department of your bank would assist in the furnishing of that service? A. That's right, the same holds true in the trust department, we don't—we assist our trust department in, **[90]** say, selling trust services in the correspondent bank market as well as any other market. We don't actually, in our department, give advice on wills or corporate trust matters, things such as this.

Q. Would your bank give such advice as those? A. Yes, I think it would.

Q. Are you then personally familiar with the correspondent services which are offered and provided by your bank to other banks in the Atlanta area? By that, I mean Fulton and DeKalb Counties? A. Yes.

Q. All right. Am I correct in assuming, let me change that for Mr. Hodgson's benefit, are you personally familiar with the correspondent banking needs of small banks in the Atlanta area? A. I think generally so.

Q. And you oversee the solicitation of sales of correspondent services to those banks? A. Yes.

Q. Then, is it the nature of your job to be familiar with their correspondent needs? A. Yes, sir.

Q. To your knowledge, do you offer the basic range of all the major and basic correspondent services that other Atlanta banks offer? **[91]** A. I would presume so, we think so.

Q. All right. Now, to the best of your recollection, I don't know that you have brought anything with you, could you list as many of the major services, correspondent services as you can? A. Well, clearance of checks, loan participation, both purchase and sale. Data processing work, investment services, financing services for the bank itself, various forms of, let's say, operational and management assistance. I don't know—it's a little hard to—really, get out a list.

Q. Do you recall that I've spoken to you on a number of occasions and asked you about your operations? A. Yes, sir.

Q. Now, if I were simply to suggest that certain phrases that I believe you have stated, would you tell me whether I'm correct or incorrect in my assumptions that you provide these services, Federal funds? A. Yes, we have a Federal funds service.

Q. Okay. Financing of the small bank's expansion? A. Yes, in various ways.

Q. Pension and profit sharing plan administration? A. Yes, sir.

Q. Personnel assistance of any type? A. Yes.

Q. Portfolio management or some other phrase that **[92]** might—— A. Yes, we do some work with—if you're talking about investment portfolios of banks.

Q. Yes. A. Yes, we have a service on a fee basis.

Q. Does the phrase "Credit information" mean anything? A. Yes.

Q. In what sense? A. We exchange credit information with customers as well as competitors.

Q. Do you furnish credit information as a correspondent service? A. I suppose you could call it that. As I say, we would exchange credit information with someone who's a customer or non-customer. I think that's sort of a function of our business.

Q. Do you furnish a factoring service? A. Yes.

Q. Briefly stated, what is a factoring service? A. I think I heard Mr. Padgett cover this pretty well this morning.

Q. It's his definition, as you heard it—— A. Essentially, the purchase of receivables on a non-recourse basis for cash.

Q. Do you handle payrolls for anyone other than your **[93]** own bank? A. Yes.

Q. Do you handle them for other banks? A. You're speaking of payroll accounting, preparation of them? Yes, we do.

Q. Under a correspondent relationship? A. Yes.

Q. What mechanically do you do in the handling of somebody's payroll? A. Well, they will give us a list of their employees, the pay scale, time records, whatever we would need

as far as input. We will prepare the payroll checks for everyone or entries to use to credit someone's account, withhold the proper tax information, keep all the records where at the end of the year we would file the employee's end of the year withholding from those records. It's the same thing as a payroll department would do in any company or bank.

Q. You serve as an internal payroll department for another bank? A. In effect that's what it amounts to.

Q. Do you ever furnish payroll preparation to customers of other banks? A. We have on occasion.

Q. When requested to do so by the bank? A. Yes, sir.

[94] Q. Would you say this pretty well covers the major correspondent services? A. I think we have touched on them all.

Q. You talked about financing services for the bank itself, what did you mean by that, sir? A. Well, several things are involved here. You mentioned Federal funds, this is one form of financing for your small bank. We maintain a market in Federal funds. We purchase funds in a case where a bank has excess funds over and above their reserve requirement, we might purchase these on an overnight basis. Where a bank may need funds, they are in a short position with regard to their reserves, we would sell them overnight funds.

Q. All right. I believe Mr. Padgett described that pretty clearly. I assume there is a basic uniformity in check clearing functions as sold as a correspondent service among all major banks in Atlanta; would I be right? A. I didn't hear his testimony. I would think there is a uniformity.

Q. Could you briefly describe what check clearing involves? A. Well, first let's take a small bank in middle Georgia somewhere, deposits from all of its customers may be drawn on his bank, competitor across the street, our bank, a New York bank, anywhere in the country. He would bundle **[95]** this up into a deposit and send them to us. We would credit his account

and undertake to present those checks for payment to the Federal Reserve Bank in various places.

Q. You talked about the loan participation, could you briefly describe what that is? A. Well, this would be one bank purchasing an interest in a loan originated by another bank.

Q. And you said you involved yourself in terms of correspondent services with both the purchase and the sale of loan participation; is that correct? A. Yes.

Q. Could you first describe what is involved or under what circumstances you would normally purchase a loan? A. I think the most common circumstance would be where a small bank is entering into a loan arrangement with one of its customers and the loan is over and above his legal limits to any one customer. The bank can only lend a certain percentage of their capital structure to any one customer. We may be asked to take everything in excess of his legal limits.

Q. Do you often do that? A. Yes.

Q. Is this generally done with regard to banks that maintain a correspondent account with you? A. Yes.

Q. You rarely—would you ever do it with a bank **[96]** that does not? A. Possibly, but I would have to say rarely.

Q. Now, you say you are familiar with the selling of the correspondent services, How, to your knowledge, then does the purchase by you or your bank of a loan participation from a smaller bank that can't meet the loan, how does this benefit that small bank? What are the burdens that the small bank has to assume? What are the ones you assume? A. How do the fact that we participate in the loan, how does it benefit him?

Q. Let me withdraw that. It's pretty long. Would the bank in the absence of a participating purchaser such as your own bank, be able to make the loan at all? A. Well, you can't

legally handle the loan for the amount requested if it's more than his legal limit. The law specifies what he can lend to any one customer.

Q. This increases his lending capacity? A. In effect, yes.

Q. Now, if a small bank does—I'm sorry—when a small bank does sell you a loan participation, who handles the servicing of that loan account? A. Normally the small bank.

Q. Do you ever deal directly with the customer involved? A. On occasion we have.

Q. Generally,—— **[97]** A. In some cases our bank, for instance, might originate the loan and sell back a participation up to his legal limits, that's done.

Q. When you purchase, it is generally the originating bank that deals with the customers? A. As I say, generally that's true. In some cases where it's his customer, we may for one reason or another, originate the loan at his request and give him back whatever share he wanted to take in the loan.

Q. If a bank comes down to you under the normal circumstances, and asks you to participate in those cases when you chose to do so, do you go in these cases and deal with the customer? A. I'm not sure I understand what you are asking.

Q. Let me rephrase the question. A. Go in and deal with the customer?

Q. When a small bank originates a loan in which you buy a participation, do you try to interfere with the bank's relationship with that customer? A. No.

Q. In other words, you permit the bank to do all its direct dealings to satisfy the customer's needs with respect to that loan? A. In some cases we do have some direct dealings with the customer, for instance a small bank customer and the small **[98]** bank wants us involved.

Q. If the small bank wants you involved? A. Yes, that would be the most common case. I mean, we do, on occasion, deal with those people under certain circumstances. You are talking about negotiation of the loan, terms, payment schedules, this sort of thing?

Q. I see what you are getting at. All right, fine. In terms of the general servicing of the loan, once everything is established, the collateral made, the manner of the loan being paid, would you participate? Does the original bank nonetheless do the participating with the customer? A. Normally speaking.

Q. Did you ever refuse to purchase a loan participation? A. Yes.

Q. What are some of the reasons you might refuse? A. If the loan isn't any good.

Q. It would be normal? A. That's one.

Q. What else? A. The rate doesn't appear to be attractive, I would say pretty much the same reasons you normally turn down a loan in your own bank.

Q. I see. What about a situation where the economy is such, I don't know if you heard Mr. Padgett discuss the situation around 1968, I believe there was a tight money **[99]** market. Did this lead you to refuse to buy any participation from your correspondents? A. We would like to think not but I am sure that probably influenced some of our decisions.

Q. Some of your decisions. You didn't cut off all of your correspondents? A. No.

Q. Why, under the circumstances, especially in tight money, but generally do you buy the participation? A. Excuse me; restate that question.

Q. What do you gain from buying a participation? A. Well, this is what we gain, is largely dependent on the state

of the money market, I would say. In some cases, if we are looking for places to invest our funds and looking for loans, the fact that someone presents such a loan and that is an attractive medium for an investment, it's a good deal in itself, or if the correspondent bank were to bring you a loan and it's a customer you wanted to serve, you'd be serving your correspondent by allowing him to take care of the customer by buying the loan. I think at least in our bank we look at it from both angles. The loan for its own sake and what you're really rendering to your correspondent as a service.

Q. Okay. A. I would say in 1960, for instance, we felt we were **[100]** rendering a heck of a lot of service. Maybe over the past year somebody might have been rendering us a service by selling us some loans.

Q. Under what circumstances would you sell participation to a small bank? A. Well, there again, that's a function of the money market. We were just tickled to death to sell a loan participation about three years ago. Looks like you could make all the loans you wanted to make. We might sell them for liquidity reasons in our own bank. We might sell them as, again, an investment medium for the small bank.

Q. Would you explain that? A. Let's say a small bank has various low loan portfolios looking to build loans. He might request we sell him a participation in loans we have on the books, too, as an investment on his part.

Q. And upon such a request, have you ever done so? A. Yes, we have.

Q. Have these ever been or are these generally in regard to loans that you weren't looking to sell off? A. There again, I would have to say it depends on the market, a very tight money period we might aggressively try to sell off loans. In another money market we might have that as a service.

Q. So, a sale under those circumstances might be as an **[101]** accommodation to a small bank? A. That's rght.

Q. Now, when an officer of a small correspondent bank of yours wants to make a loan in excess of his own lending limits and he knows that he will have to sell your bank a participation before he can commit himself for the loan, how does he know whether to commit himself at all? A. Say, if he—I'd better get you again.

Q. Let me restate it this way. Let's say I'm president of a small bank and have a correspondent relationship with you. A man comes in—I'd like you to think of specific instances where this is true, not as a hypothetical—a man comes in, wants to borrow "X" dollars from me. I can lend him only forty percent of that. I call your bank to ask that you participate as you have in the past with other loans. I want to commit myself to this man as quickly as I can. How do I know whether I can? How do I know he won't walk out the door?

Mr. Doyle: I'm going to object to that question as to what's in Mr. Farr's mind as to what's in somebody else's mind as a hypothetical.

Q. (By Mr. Stern) I will withdraw the question.

How does a man, a small bank president, find out whether he can commit himself on a loan beyond his lending limits? **[102]** A. He picks up the phone and calls one of our people and asks him.

Q. Asks him what? A. He might say, I have so and so here that needs to borrow "X" dollars on this basis. Would you be interested? If one of our lending officers feels he has sufficient information to make a decision, he might say, "Yes, go ahead. We will go with you on that basis."

Q. Is this sometimes done over the phone? A. This is sometimes done, there are various ways of handling it. This might be one.

Q. If the situation is sound enough, is it possible then for the bank president of the small bank to get over-the-phone approval? A. That's done in some cases.

Q. Okay. And data processing, could you just quickly list some of the fields in which you perform this service with regard to what banking functions? A. In other words, what would be included under our data processing services in general?

Q. Right. A. Demand deposit accounting, savings accounting, installment loan accounting, certificates of deposit, payroll.

Q. Okay. Do you do accrual accounting? A. I'm not sure I know what you mean, accrual. If **[103]** you're talking about incoming expense.

Q. That sort of thing or investment accrual. A. Not at the present time.

Q. What is demand deposit accounting? A. This is, I guess, what you would say, the maintenance of the bookkeeping department for customer banking.

Q. What is involved? A. Posting of checks and deposits to each individual customer.

Q. How about savings accounts? A. The same thing except for savings customers.

Q. What about installment loan, what do you do on those? A. This would—the record keeping on installment loans, preparation of coupon booklets for the borrower, recording his payments as they are mailed in. If he doesn't mail them in, it's generated as a past-due journal, simply the bookkeeping end of the installment loan lending.

Q. You do these things with regard to customers of correspondent banks as well as your own? In other words, on an installment loan are you talking about doing the data processing with regard to installment loans of correspondent bank

customers? **[104]** (Page number 104, inadvertently omitted in typing.)

[105] A. Well, that's right, we are doing the service for the correspondent bank. We are keeping his records for him.

Q. Okay. A. In other words, we don't deal with the correspondent's customer in any way.

Q. Right. You are doing the service for the bank in regards to his customer. A. Right.

Q. Okay. Do you do anything at all with regard to helping to finance the expansion, physical expansion of a small bank? A. Yes, we have.

Q. What types of things have you done? A. Well, when you say physical expansion, I think about brick and mortar. We have financed buildings, equipment and so forth for banks.

Q. Do you ever purchase capital notes and debentures? A. We have done so on several occasions, yes.

Q. All right. With specific reference to a small correspondent bank that wants to use capital notes or debentures for its own financing, do you purchase their notes and debentures? A. Yes.

[106] Q. Okay. What is involved in investment services? A. Well, primarily, the purchase and sale of securities which would be securities in the bank's own account, anything it would own for itself, Treasury bills, municipal bonds, federal fund transactions, commercial paper, repos, just the—most any money-market instrument.

Q. All right. Very briefly, what are federal funds? A. Well, it is a—I would define them as excess reserves of banks purchased by other banks, and vice versa. Each bank has a reserve requirement that it must maintain under either federal or state regulations, and when it has more excess cash than it needs, it would sell this and get paid a fee or an interest rate to a bank that may be in a short position.

Q. I see. A. And vice versa.

Q. Okay. What do you do with respect to the administration of pension and profit-sharing plans in terms of correspondent services? A. Our trust department is in the business of administration of pensions, as well as profit-sharing plans, and we have correspondent banks among our **[107]** customers.

Q. I see. What do you do for the correspondent banks with regard to pension and profit-sharing plans? A. Well, it is primarily an investment-type function, whereby they maybe have a plan that they have approved, and we happen to be the investment medium for them, invest those funds, hopefully, in some securities that would appreciate in value and administer the portfolio for them. We have some standard funds, too, an individual or a correspondent bank or company might want to use just like a mutual fund of investments.

Q. A mutual fund? A. Well, not—that's a bad word. We are not in the mutual funds business, but let's say we call it our common trust fund. Let's say each individual trust account doesn't have a separate set of securities.

Q. Like any internal trust department operation? A. That's right.

Q. Now, have you been talking with regard to the pension and profit-sharing plan of a bank for its own employees? A. Are you saying, does our trust department have a pension and profit-sharing plan for a bank, for its employees?

Q. No, you have said you have done these things **[108]** as a correspondent service in terms of pension and profit-sharing plans when you administer pension and profit-sharing plans. Are you talking about the plan of another bank? A. Yes, I thought that is what we were talking about.

Q. Okay, fine, I just wanted to make that clear. A. Oh.

Q. Do you ever administer the pension or profit-sharing plan of the customer of another bank, say a corporate customer? A. Yes, we have.

Q. On request? A. I don't know how it would arise. We would do it, we would do it on request, yes, sir.

Q. Okay. All right. Now, when you administer the pension and profit-sharing plan of a small correspondent bank itself, do you determine how much their employees will get in terms of rate of return or are such things determined by the bank setting up the plan? A. You mean what their contribution would be and this sort of thing?

Q. Among other things, yes. A. No.

Q. Are the terms of contribution in terms of **[109]** return determined by that bank or by you? A. I think that is generally done by the customer, the bank.

Q. Okay. Now, do you ever give any assistance to a small correspondent bank that needs to fill some personnel positions? A. Yes.

Q. Could you describe how this comes up and what you do? A. Well, we deal with, as I mentioned, several hundred banks, and we come into contact with a lot of bankers and we know a lot of them that are looking for jobs, and we know a lot of them that have needs for people. So, I would like to think of ourselves as being a clearing house for personnel in some respects. In other words, we might know Bank A needs a good president, and Bank B in another area, the president might be a little unhappy with his situation and looking for an advancement or change in location. So, we might put the two together.

Q. I see. And you have done so? A. Yes.

Q. Have you done anything other than help to refer people back and forth to permanent positions? Have you ever assisted a correspondent bank that had a **[110]** temporary vacancy of some sort? A. On occasion we have. As far as letting someone

help out down there for a day or two, if they had a death in the family or we have on, let's say, rare occasions; that would be an exception more than a rule.

Q. Okay. You mentioned the phrase "management assistance". Could you tell us what that means? A. Well, this would be sort of a hodge-podge category, as far as I am concerned. We run across all sorts of problems that are presented to us really every day, and when a correspondent bank might call and say, "Well, I have got an organization problem; I don't know what to do to solve it", we might send one or two folks down there to spend the day to really look at his whole bank, see what is doing and draw him up a little report, and make some recommendations to him, which he may or may not follow.

Q. You mean the bank's whole organization, if they requested it that way? A. Yes, it is nothing on a formal basis, but we just sort of do it as requested.

Q. Okay. A. That is also done, I guess, in the operational field, if someone has a teller procedure that seems to be a little cumbersome, we might come down and say we **[111]** know of so-and-so over in Town A that is doing this way; it has been quite successful, or another branch another way. You might want to consider that. It is very informal.

Q. I see. Would you ever have occasion to scrutinize, let's say, a salary plan that they have and give suggestions on that? A. We may. I can't think of an instance where we have.

Q. All right. If requested to do so, would you give—— A. We give opinions on anything.

Q. With regard to loan policy, do you ever examine or scrutinize the loan policy of your small correspondent banks? A. Again, on request, I can think of one or two instances where people have asked us about various types of loans, and maybe they were considering going into, that they didn't handle before

and needed some assistance on, what is involved in handling a particular type of credit.

Q. I see. And did you give advice on that? A. Yes.

Q. All right. Is operational assistance substantially different from managerial assistance? **[112]** A. Well, I think they overlap. As I mentioned, sometimes a bank will have operating problems of some sort, machinery problems. They will call on us to make a little survey and we will draw upon our expertise and experience with small banks or our own bank, competitor banks, and make a recommendation to them.

Q. All right. Now, how would managerial assistance be different from this, even though—— A. Well, I think the occasion we have used this would get off into really organization of personnel. Someone may ask the question, as you suggested on salary administration.

Q. I see. Higher-level problems. A. We had a question one time of a request to do a little study on a bank's board of directors. People thought it was a little too old, and what ideas we had on speeding up the retirement of elderly directors. I mean you can get all questions; you will think you have got them all, and I betcha' we have already had a new one today.

Q. Are there services that you would not normally call correspondent services in the normal, everyday use of the term, which you tend, nonetheless, to provide with frequency to correspondent customers on request? A. No. Just about anything we do that seems to **[113]** please our customer, we want to put that in the correspondent services. I don't really know what you're getting at there.

Q. Okay, fine. A. Maybe if you can give me a for instance.

Q. All right. Let's suppose that a small bank president calls you up and says that he has got a very fine customer of considerable means, with whom he has enjoyed a long relationship as customer and bank. But, the customer would now like to have

some trust services performed, and he can't handle it; he doesn't have a trust department. Would you handle that? A. We would probably be glad to get a referral like that.

Q. Okay. Is it common for you to do so? A. We have done that on a number of occasions.

Q. All right. A. You are talking about where a bank doesn't have trust powers, doesn't choose to exercise trust powers?

Q. Uh-huh. A. Yes, we have done that.

Q. Do you, then, respect the existing bank's customer relationship or do you try to get all of his other business away or what? **[114]** A. No, we have a philosophy of respecting our correspondent's territory, so to speak. We don't make it a practice of soliciting behind his back. If he opens his door to us and refers us a piece of trust business, no, we wouldn't do that.

Q. All right. Now, generally, how are these correspondents' services financed? A. Balances; they maintain an account with them. Some of them are done on a fee basis. Let's say fees and checking-account balances.

Q. Okay. Do you ever provide any correspondent services that you don't charge for? A. Well, if you are saying don't collect a fee for, yes. In other words, we feel that we are paid in other ways.

Q. All right. Do small banks ever maintain correspondent accounts with more than one bank? A. Yes.

Q. Is it possible that a small bank in the Atlanta—let me rephrase that. Do any national banks in the Atlanta area maintain accounts with you, and at least one other bank in the Atlanta area? A. Yes.

Q. How do you know what large banks a small bank has accounts with? **[115]** A. Sometimes they will tell you. A lot of times, well, I think it is reasonably accurate to look in the

Southern Banker. Most small banks there list all their primary correspondents.

Q. This is public information as a rule? A. I consider it such.

Q. Okay. Regarding this solicitation and sale of correspondent services to small banks in the Atlanta area, what other banks would you say are your major competition for the sale of those services? A. In the Atlanta area?

Q. Yes. A. Well, I would just—let's say C&S, Trust Company, Fulton National and National Bank of Georgia.

Q. Do you call this your basic grouping? A. This is it. These are the banks that purport to be in the correspondent banking business.

Q. And you regard yourself as the competitor of each of these banks? A. We hope so.

Q. What effect does this competition have on any national bank in the Atlanta area that wants to switch from one bank to another for correspondent services? A. What effect? I am not sure I understand what you are getting at there.

[116] Q. Is it easy for a small bank in the Atlanta area to switch primary correspondent sources? A. Yes, I think so.

Q. Okay. Do you provide correspondent services to any banks with which you are in direct competition? A. Yes.

Q. Does this competitive situation have any cooling effect on your correspondent relationship? Does it inhibit you or are you perfectly willing to provide a general range of services for such a bank? A. Well, we are willing to provide, from our standpoint, I think, when you get into a market area where you both have locations, if that is what you are saying, we will have an understanding with the bank that we are not going to section off an area for him to be protected in by any means.

Q. Okay. A. No, we don't do that.

Q. Delighted to hear it. A. We will go after him. We will try to do business with him at the same time. If we are not successful, that is our general attitude.

Q. To your personal knowledge, do you know whether officers of smaller banks in any significant number used to work for larger banks? **[117]** A. Excuse me, officers of smaller banks now that used to work for larger banks? Yes.

Q. All right. Are there some in the Atlanta area? A. You mean are there some——

Q. Small bank—— A. Some bank officials in a small bank that used to be with a large Atlanta bank?

Q. Right. A. Yeah.

Q. Do you know whether personnel from your bank have ever been hired away by smaller banks? A. Yeah.

Q. Did these people hold responsible supervisory positions? A. In our bank?

Q. Yes. A. Yes.

Q. All right. Now, how do you go about establishing a correspondent relationship with a small bank? A. Well, you go out there and just figure out any way you can do it, figure out something you can do for them, cultivate him. It is, I guess, much the same as soliciting any sort of business relationship. **[118]** You have a product to sell, you have to go out and prove in his mind that you can do it better than anyone else.

[119] Q. Okay. Do you ever solicit the business of a small bank and get only one or two services perhaps when it still retains another bank for the other services? A. Yes, sir.

Q. And then do you try to cross-sell them additional services beyond that point? A. Yes, we like to have it all if we could.

Q. Have you ever assisted in the organization of a new bank? A. Yes.

Q. Would you have a rough idea as to how many times over the past, let's say, year your bank has helped? A. I would say in the past year I can think of two occasions.

Q. When that happens, who runs the new bank? Do you run it, does your bank run it? A. No. Who runs it?

Q. Yes. A. The people who organize it and the president, whoever it is that they are.

Q. What, specifically, do you do to assist in the organization of a new bank? A. I'd have to say we do pretty much what Mr. Padgett testified this morning. We'll start off, offer any assistance in the preparation of applications based on what we have **[120]** learned from previous experience, branch applications and the like. We may help in offering suggestions on the location. Pretty much anything we are asked to do, financing for stockholders, directors, who want to buy stock and don't have the full amount of the purchase price. We do a lot of financing, possibly financing of the bank's building.

Q. Okay. Why do you go to all this trouble to help a bank that is going to be independent? A. To get his account.

Q. What account? A. The correspondent account. It's going to keep you, pay for that.

Q. When one of your correspondent banks, existing banks want to open a branch office, do you ever assist in preparing a branch application? A. Yes.

Q. Do you ever assist in the construction of buildings for a branch? A. Yes.

Q. Do you ever loan out a trailer unit for the trailer unit to be used for a while? A. We have on one occasion.

Q. Do these small banks, correspondent banks that are involved in existing relationships with you ever send you any kind of continuing report, periodic reports on the performance? **[121]** A. We get whatever everybody else does.

Q. What is that? A. Usually a statement of condition which is published quarterly and semi-annually.

Q. Do they account to you in any way? Do they have to meet your approval in any other regard? A. No, this is pretty much a courtesy thing. I think most banks exchange reports, its public information. You can pick it up in a bank lobby. I think most banks have a habit of sending what is published to correspondents.

Q. Do you require anything above that to be sent to you to account to you? A. No.

Q. Do you ever do audits, perform audits of correspondent banks? A. Yes.

Q. On what occasions? A. At the moment, upon request.

Q. What type of things would you audit, what part of the operations? A. This audit service we provide is much the same as FDIC or State Banking Department would provide. It's a supplement to that.

Q. A supplement to it? A. I think so.

[122] Q. It's generally on the request of the small bank? A. Yes, we have a department that handles this for us.

Q. Okay. Do you ever provide the smaller banks with advice? A. When asked.

Q. On any particular thing, or on just about anything? A. Just about anything.

Q. Okay. Can you think of some instances other than what we have discussed where, you know, maybe with regard to the services we have discussed, where they have called in and asked your specific advice? A. You mean on the full range of correspondent services or just by an NCR Burroughs Teller Machine?

Q. Yes. A. Yes, we are asked this quite often.

Q. Do you give advice on a continuing program or generally when requested or when something comes up? A. Generally when it comes up, with the exception of one thing that we offer in the investment department, which is a continuing procedure that we sell, the investment advisory service, we report on a periodic basis where he stands with a bond portfolio, make recommendations for purchases and sales. There again he is under no obligation to take the advice. That's part of a service we sell.

Q. You say there again, am I correct, he is never under **[123]** an obligation to take your advice? A. No, you're correct in assuming he has no obligation.

Q. Okay. One moment. That's all the questions on direct we have.

Cross-Examination

By Mr. Hodgson

Q. Mr. Farr, don't be surprised if you hear the same questions that you may have heard me asking Dave Padgett. A. Okay.

Q. Because that's what I'm going to ask you. With respect to your correspondent division, do you routinely and systematically receive from your correspondents any forms or reports with respect to management performance, credit past due, or any other performance information? A. No, with the possible exception if we are participating in a loan. You are talking about just management?

Q. Right, but go ahead and expound. A. If we are participating in a loan, say, secured by accounts receivable or something, we would get reports on the status of the collateral, things like this.

Q. Of course. Do you furnish to any of your correspondents any regular analyses or statistical compilations comparing de-

posit performance, earnings and expense ratios, recommendations for improvement of their operations? A. No, I don't think so.

[124] Q. Do you distribute routinely to your correspondents any of your own operating credit guides, the same that you afford to your branches? A. No.

Q. Do you ever have advisors sitting to advise what their Board of Directors as a routine matter? A. Not as a routine matter, no.

Q. Do you offer blanket insurance coverage to any groups of your correspondents affording them fidelity insurance, safe deposit, extended coverage liability and the like? A. No, sir.

Q. Do you offer to their officers or employees or any of them participation in your own pension and profit sharing and other incentive plans? A. No, we don't.

Q. Do you ever regularly recommend—do you ever recommend salary and wage changes in accordance with service and performance records of their officers and employees? A. The question is, do we ever?

Q. Yes, sir. A. If we have, I'm not aware of an instance.

Q. Do you routinely provide a pool of personnel to meet absences in peak periods, illnesses, vacations and other personnel needs? A. No.

[125] Q. Do you voluntarily furnish their new presidents or other managing officers? A. Well, if we can find someone.

Q. From your own staff, I mean. A. From our own staff, no, we don't.

Q. Do you provide periodic surprise continuing internal audits of these banks, any of them? A. Yes, we do, within the framework of our audit service we provide with correspondent banks.

Q. This may be a surprise audit correspondent thing? A. In all cases, it is. It would be saying that they would agree to be with us and, of course, by nature of audit, it has to be a surprise.

Q. How many of your correspondents have the service? A. Right now, off the top of my head, very few, like four, five, something fairly new for us.

Q. Do you receive from your correspondents regularly any sort of budgets or performance projections for your own analyses and comment? A. Performance of budgets at their own banks, no.

Q. Projections? A. No.

Q. Do you ever review their performance against any such projections? A. Well, no.

[126] Q. Do you provide any standardized general ledger accounting system for your correspondents? A. No.

Q. Do you routinely provide them with advice on the multitude of changes in the law, say, under the wage price freeze truth in lending? A. Now, back up to that last question.

Q. All right, sir. Do you provide a standardized general ledger accounting system for your correspondents? A. No, the only possible exception under this, under one of our investment programs we do, say, attritions on bond discounts which may be a small portion of it.

Q. That would be it? A. That is under the investment portfolio. We do some investment accounting which involves general ledger entries, they would put on their general ledgers.

Q. This would relate only to performance of their investment? **[127]** A. That's right.

Q. Do you provide continually and regularly advice on substantial changes in the laws, such as in the wage-price guide-

lines and freeze, truth-in-lending and the like? A. We have no regular program, but we have advised on occasion.

Q. On request? A. Yes. I was thinking particularly with Phase I and Phase II. We were inundated with requests on that.

Q. You didn't try to answer them, did you? A. Well, we just kind of blew a little smoke up there and told them we would read it. But, no, we were called upon for services when this came out, and I guess, due to our—as I say, we had done some research on it; I don't know whether it was the right research, but we had done our best.

Q. Do you routinely prepare income-tax returns for your correspondents? A. No.

Q. Do you allow any of them to use your logogram or to otherwise identify with you generally as being anything other than a mere correspondent bank? A. Well, there's quite a few First National Banks, but as far as our logo and design of our print and so **[128]** forth, no, whatever we would have trademarked we do not allow to be used.

Q. Did you allow anything to be used by the little banks in Doraville and DeKalb which subsequently merged into your bank? A. Yes, but I didn't consider that a normal correspondent. That was not serviced under our department.

Q. That was serviced by another department? A. Yes.

Q. How was it different? A. How was what different?

Q. How was the relationship as between those two banks and your correspondent banks? A. Well, as I say, I was not privy to all the negotiations on that. That was handled in a different area, but I think, obviously, that bank merged with us, as long as the law enabled it to do so, I think the organizers of that bank probably had good intent to merge with the First National Bank of Atlanta.

Q. At the time they organized? A. Yes, they had one of our people out there managing the bank as president, one of our former officers, who is now back with us, a branch manager. That was not what I would call the normal correspondent.

[129] Q. Fine. Do you routinely or do you ever have staffs of your correspondents, as distinguished from these last two banks, Doraville and South DeKalb, have them attend any of your training programs and schools, say for officer training, credit law and that sort of thing? A. Excuse me, you are saying any of our correspondents that might——

Q. Staffs from your correspondent banks themselves attending your training programs. A. We have had people in on occasion, but as a continuing practice, no.

Q. Do any of your correspondents have a significant number of their shareholders who are officers, directors or employees of the First National Bank of Atlanta, that you know of? A. How about asking you to go over that one more time.

Q. All right, sir. Because this asks you to know more than you may know, so far as you may know. A. Are you saying any officer or employees of any one of our correspondents?

Q. No, sir, let me rephrase the question, because I don't want to confuse you. A. I misunderstood you.

[130] Q. Do you know of any shareholder list of your correspondents which include significant—a significant percentage of their shareholders of the correspondent banks, of men and women who are officers, directors or employees of the First National Bank of Atlanta? A. No. Well, there is one circumstance that I can think of. We have a bank that is, let's see, I call it an affiliate-type operation in Savannah, but——

Q. Beyond that? A. We do, let's say, bring this up, because we do wait on this bank through our correspondent banking department. In other words, when they have a need for a

currency shipment or credit information or what-have-you, they will call our department and we will ship it. Although it is not the normal correspondent bank relationship.

Q. Have you ever tried to sell your correspondent services to any C&S office or affiliate? A. Not to my knowledge.

Q. Or to any of the six little banks that are involved in this litigation, say the Citizens & Southern Bank of Chamblee, et cetera? A. No, sir.

Q. Why not? A. Well, we didn't think they were good prospects.

[131] Mr. Hodgson: We have no further questions, Your Honor.

The Court: Redirect?

Mr. Kinkaid: Your Honor, would you mind if we took a short break before redirect? We have a little problem that has come up and I would like to solve it to keep it from being a big problem.

The Court: We will take a recess for ten minutes.

Mr. Kinkaid: Thank you, Your Honor.

(Whereupon a recess was had.)

By Mr. Stern

Q. Mr. Farr, when Mr. Hodgson was asking you some questions, he went through a list of items and asked whether you regularly and routinely provide various things to correspondents. Are there any of these things, such as sending somebody out to advise the board of directors or making salary recommendations, reviewing personnel plans or anything else that Mr. Hodgson mentioned that you don't provide routinely, but will provide on request? A. Well, I don't know if you want to take specific ones. It might be a little easier for me to answer it. You mentioned—what was the first one?

[132] Q. All right. Sending somebody out to advise their board of directors on something. A. Well, I can think of one occasion or maybe twice, and it's about that many times, one of our people has been invited to attend a board meeting of a bank to make whatever comments he saw fit.

Q. You mean in general terms? A. Yeah.

Q. Without there being a specific problem necessarily? A. Yes, sir, I can think of one occasion, one of the correspondents invited our man to come down and sort of critique their board meeting, and he was invited to make some remarks on how he thought they might do a better job.

Q. As a board? A. Well, they were speaking of the bank, in that case. That is one of the instances I can think of.

Q. Can you think of any others, offhand? A. I can remember another instance where another bank invited us to a board meeting, but I don't remember whether we were asked to comment or otherwise.

Q. Are you willing to do so, if requested? A. Yes, as I say, we are willing to do most anything that is legal, moral and can get us some **[133]** business.

Q. All right, sir. Take another specific. How about making recommendations to a small bank's board as to what it ought to pay its officers or employees? A. I can't think of any instances where we have made recommendations of this sort. I may have hesitated here. I think when, you know, upon occasion, if somebody is looking for someone to hire, like a new president, a new cashier, a new loan man, they might say what do you think it will take to hire a good one like that? We might say, you are going to need to pay him X number of dollars, based on what we have seen. That's the only semblance of salary recommendations that I can ever remember any of our people making.

Q. Would you, on request, or have you, on request, ever reviewed the performance of a bank or its officials? **[134]** A. Again, I can think of an instance where we were asked to make a general study on a bank where we were asked to critique their performance, private-wise, not individual officers in the bank, just how this particular bank racked up with their competitors as we saw it.

Q. In terms of all the accounting and record keeping and other things that you have already said you do for a small correspondent, if you were asked to make out a tax return for a small bank, might you do so? A. I don't know that we have ever been asked. If we were, I would assume if we had the capability to do that and legally so, we would do it.

Q. Mr. Hodgson was questioning you with regard to First National Bank of Doraville, I believe? A. Yes.

Q. And First National Bank of South DeKalb? A. Yes.

Q. You said something to the effect, as I recall it, that these really weren't the normal correspondent relationships; is that correct? A. That's right.

Q. In what way were they different? A. Well, there again, in my opinion these things were organized with the, really, the hopes that we could become affiliated as a branch in one point of time, as it turned out, **[135]** we were. I can't really speak a whole lot of authority there as I was not in the position at the bank that handled that.

Q. Are there any other banks in the DeKalb-Fulton County area that were organized the same way which at any time enjoyed that kind of relationship? A. Not that I can think of.

Q. Any other banks—— A. Excuse me, you're talking about that we were party to?

Q. Let me restate it. Are there any other banks in DeKalb or Fulton County which at any time in the past have had a relationship with First National Bank of Atlanta which went

beyond the normal correspondent relationship such as the South DeKalb and Doraville banks did? A. I can't think of any.

Q. You mentioned the use of the name of the bank. Are there any banks in the area—you mentioned Fulton and DeKalb Counties—that also use the name First National? A. Yes.

Q. What are they? A. First National Bank, I think it's called, used to be Glenwood National, became, let's say, affiliated with that, and then unaffiliated. I think they call themselves First National Bank of DeKalb County now, I'm not sure.

Q. Were they ever First National Bank of Glenwood? **[136]** A. Yes.

Q. Is that after you were affiliated with them? A. Yes.

Q. They were known by another name before that? A. Yes.

Q. Glenwood National Bank after your affiliation and after they changed their name to First National Bank of Glenwood, did you enjoy a relationship of any sort between the two banks? A. You're saying——

Mr. Doyle: There comes a point, if the Court please, to the leading questions which require an objection. We object to him leading.

Q. All right, Mr. Doyle. Could you describe to us whatever relationship existed between First National Bank of Atlanta and First National Bank of Glenwood after it became that bank, by that name? A. I really can't since this was handled outside of my territory. We did not handle this one in our own division.

Q. Do you today furnish any services to the First National Bank of Glenwood or by whatever name it's now known? A. Yes, we do.

Q. In what capacity do you furnish services? A. As a correspondent bank.

Q. They enjoy the correspondent relationship with you? **[137]** A. Yes.

Q. To your knowledge, was it ever the intention to merge First National of Glenwood into First National Bank of Atlanta? A. Yes, I think it was probably the intent.

Q. All right. A. I'd like to have seen that happen.

Q. Was it not the—do you know whether it was the intention of the officials at First National Bank of Atlanta that this be so? A. Yes, I think we formally made petition to do so and were objected to.

Q. Are there any other banks in DeKalb or Fulton Counties where this was the case? A. First National Bank of Tucker.

Q. Do you enjoy any kind of relationship today with First National Bank of Tucker? A. Yes, we do.

Q. How would you describe that relationship? A. Correspondent bank relationship.

Q. Would you classify the correspondent bank relationship, as you call it, with the First National Bank of Tucker and First National Bank of Glenwood, whatever name it has now, as being typical of the correspondent relationship you have with other banks? A. Well, as far as we would offer them service-wise, **[138]** yes. I don't consider them, well, typical, because of the market they serve. In other words, a bank in metropolitan Atlanta is going to operate a lot different than a bank in south Georgia.

Q. Because they're in metropolitan Atlanta, they may differ from other correspondent relationships? A. Yes.

Q. Is the relationship you enjoy with those two banks in metropolitan Atlanta similar to correspondent relationships

you have with your other ordinary correspondent relationships elsewhere in metro Atlanta? A. Yes.

Q. Do you know who the president of First National Bank of Tucker now is? A. Yes.

Q. Do you know what his name is? A. Yes.

Q. Would you state it? A. Warren Jackson.

Q. Did he come to that bank from First National Bank of Atlanta? A. No.

Q. Do you know where he came from? A. Yes.

Q. Where? **[139]** A. Trust Company of Georgia.

Q. Do you know the president of First National Bank of Glenwood? A. Yes.

Q. Do you know what his name is? A. Yes.

Q. Will you state it? A. C. B. Harris.

Q. Did he come from First National Bank of Atlanta? A. No.

Q. Do you know where he came from? A. Yes.

Q. Where? A. Gainesville National, Gainesville, Georgia.

Q. To your knowledge, your own personal knowledge, has First National Bank of Tucker drawn personnel from First National Bank of Atlanta since Mr. Jackson came out there? A. Since he came? If he has, I don't know of anyone.

Q. Do you know whether it drew from First National Bank of Atlanta before he came? A. I'm not certain. We had some people formerly on our payroll who are out there. Whether or not these all returned to us or whether some remained, some people formerly our employees were in the employ of First National Bank of Tucker. I believe all of these were offered re-employment **[140]** with our bank. Whether or not all of them were re-employed, I don't know.

Q. I want to make sure I understood your answer there. You said some people who had been employed with First National Bank of Atlanta went to become employed by First National Bank of Tucker? A. That's right.

Q. Was this during the time you still hoped to merge them in? A. That's right.

Q. And you don't know whether they have all returned or not? A. No, I don't.

Q. Was a similar situation in effect out at the Glenwood Branch? A. Yes.

Q. Do you know whether they have all returned? A. I can't answer that with any authority either.

Q. Okay. Now, I just want to make this clear again. You say that the relationship you have with these two banks is substantially the same as the correspondent relationship of the other banks in metropolitan Atlanta?

Mr. Doyle: Object. It's repetitive, it's been asked and answered and it's leading.

Q. I wasn't leading. I'm asking if that's what he'd **[141]** said. All right. Do you happen to have any personal knowledge of where they obtained, these two banks I mentioned, obtained their other personnel from such as new presidents come in? A. Do you mean, for instance, who Warren Jackson has hired since he was president of First National Bank of Tucker?

Q. What his resources were. A. He brought one lady from Trust Company of Georgia to be cashier, a girl named Penny Jones. I have met her. I have not met anyone else out there. I don't know whether he has other staff.

Q. Would you consider it a sound correspondent relationship you have with his bank? A. We hope so right now.

Q. One minute, please. No further questions.

Cross-Examination

By Mr. Hodgson

Q. Was either the First National Bank of Glenwood as it has been known or First National Bank of Tucker, as it has been known, formed with the assistance of First National Bank of Atlanta? A. I'm sorry—I didn't——

Q. Was either the Glenwood or Tucker bank—— A. Were they formed with our assistance?

[142] Q. Yes. A. I think so, in the case of Tucker. Just offhand, I believe that bank must be eight, ten years. It may be a little bit older than that. I think when the people organized the First of Tucker, we were correspondent at that time. It was organized as an independent bank.

[143] Q. Was either one of them organized like the Doraville and South DeKalb banks? A. No, sir.

Q. We were talking about, as you say, with the purpose of being acquired by First National of Atlanta. A. No, sir, they were not, or Tucker was not. Glenwood, that's an old, old bank; I don't know what the history of Glenwood was.

The Court: Let me ask you a couple of questions. Correspondent services are paid for either by the maintenance of the correspondent account and the balances it had or by fees?

A. Yes, sir.

The Court: Can you give me an idea as to what the breakdown is?

A. Well, maybe I can give you an example of some of the things that we charge for when we charge fees. Pension and profit-sharing administration, our trust department has a fee schedule it charges on that. There's nothing magic about a bank; we do this for all sorts of enterprises; data-processing services, we charge fees for all of ours. This would be primarily what we charge fees for.

The Court: I take it the trust department, **[144]** for example, of either of the two banks, Glenwood or the Tucker bank that you just discussed, have trust departments?

A. I don't believe they operate actually trust departments. I am not even certain, in the case of Glenwood, I am pretty sure Tucker does not.

The Court: If they have trust business, do you handle it for them, or do they just refer you a customer who becomes a customer of the First National Bank?

A. Well, if you are saying if one of their customers comes into their bank requesting trust service——

The Court: That's right.

A. The case would be, if they desire, they might refer that to our bank.

The Court: What does happen?

A. That customer of the Glenwood Bank, say, as far as trust services are concerned, becomes a customer of our trust department.

The Court: Now, what was the situation with these two others, the Doraville and the other bank, how were they handled there?

A. I really can't answer that. I don't know how that was administered, but I can just guess it was **[145]** the same way.

The Court: I get the impression that as far as correspondent services are concerned, what you are saying is that you can, if there is enough demand and pay for it, perform for a correspondent any service that you can perform, that the First National Bank itself can perform; is that right, absent, say, some legal impediment, such as practicing law or something like that?

A. Well, I would say that we would perform anything we felt would be profitable to our correspondent bank endeavor.

The Court: Well, that must mean that there is a substantial profit then in the maintenance of correspondent balances; is that right?

A. I would say so.

The Court: Now, why is it that a correspondent bank would let you have its balances?

A. Well, they will let you have them if you are providing these services for them.

The Court: Apart from these services, would it be more profitable for the correspondent **[146]** bank itself to handle its own collections? I take it that is the primary reason for the correspondent account.

A. Well, of course, in most of the cases he has to have someone perform these for him.

The Court: Why?

A. Loan limitations. For instance, the First National Bank of Tucker has a $60,000 lending limit. That means he can't lend any more than $60,000 to any one particular customer; anyone who needs more than that doesn't obtain it from them.

The Court: If he doesn't have an account with the First, in order to handle the excess limitation, he keeps an account at the First in order to handle his check clearances, doesn't he, and collections?

A. No, Your Honor, I think you would find that——

The Court: Tell me why he does have that.

A. We would not be so receptive to buying his loans if it were not for the correspondent balance he has with us.

The Court: I understand that, but what is the mechanical reason for the account?

A. Well, mechanically, as far as the transfer of **[147]** funds, you need to have a correspondent relationship. But, when we

make a loan to a customer, no matter who it is, it is sort of based on what sort of checking account balances he is going to keep with you, versus the rate on your loan, and if you are buying a——

The Court: Let me ask you why would another bank have a checking-account balance with you anyway, apart from the buying of correspondent services?

A. Okay. In some cases where you have a non-member of the Federal Reserve Bank, he has to have an account somewhere for a reserve account. And in that case——

The Court: Is that a typical situation?

A. Yes, there are many, I would say probably most of the small banks in the state of Georgia are non-members of the Federal Reserve system.

The Court: Is that true of the situation around Atlanta?

A. I would have to stop and count. We were talking about two national banks, and they are, by definition, members of the Fed system, if they are national-chartered. But, there are a number of banks in what I would call the metro area that are non-members **[148]** of the Federal Reserve system. Theoretically, a national bank could operate with only its Fed account, I presume.

The Court: So, then, the real purpose then of keeping the account at the big correspondent bank is simply a means of providing payment for these other services; the larger the account, the more service they can get?

A. I would say that is true.

The Court: Is there anything in the word "correspondent" that excludes the idea of an ownership or equity interest? I am not sure that I am—we have used words, "affiliated banks", "correspondent banks", "associate banks". If you use the word "correspondent" alone, that doesn't imply any ownership in it?

A. No, sir.

The Court: If you use the word "affiliate", what does that mean?

A. To me, that implies some ownership interest or intent to own.

The Court: How about "associate"?

A. Same thing really.

The Court: Same as affiliate?

A. In my mind that implies ownership or intent **[149]** to own.

The Court: Now, what is the money which is included in the correspondent bank account, is that simply money in transit, that is, they put in checks; they deposit it into their account in your bank, and it stays there until the money is collected, and then until the correspondent bank has some need to pay out money; is that what we call it?

A. I would say generally that is true. You have situations such as this, at the end of each business day a bank has checks drawn on any number of banks that it must collect, so he would bundle these into one deposit and send them to us for deposit, and we would credit his account. By the same token, he has activity the other way; the Federal Reserve Bank sends each day what we call a cash letter. In other words, the First National Bank of Tucker every day sends it to the First National Bank of Atlanta; the First National Bank of Atlanta every day receives a batch of items from the Federal Reserve drawn on our banks, and we must pay the Federal Reserve for that. So, we are talking about the flow of funds in a correspondent account. I would define it that way. The correspondent is depositing checks drawn on other banks for clearance, **[150]** and generally, drawing on that account to pay for what is presented to him by the Federal Reserve Bank.

The Court: Well, then, if that is the case, then that would indicate that all the free funds from the correspondent bank are in the correspondent bank account; is that right?

A. If you are describing "free funds" as, say, operating till or whatever, that plus what he has on hand in his vault. And in the case of a national bank, what he has on deposit in the Fed.

The Court: Well, now, do you have any system to require a minimum balance with respect to correspondent accounts?

A. Yes, we have an analysis system where we look at each correspondent bank account. We analyze the activity as far as numbers of items produced for the bank each month, number of checks paid, a resume of the loan participations that we worked for him, both ways, really a summary of all services and determine what those balances are worth to us, as far as investment, and then calculate whether or not we are earning a profit or creating a loss on the account. Communicate with the correspondent what balance level we would expect him to maintain in order for us to maintain the level of **[151]** services we are providing.

The Court: Thank you. You may step down.

Mr. Kinkaid: Your Honor, the plaintiff now calls Mr. Megar.

HERBERT LEONARD MEGAR,
being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kinkaid

Q. Would you please state your full name. A. Herbert Leonard Megar.

Q. Where are you employed, Mr. Megar? A. Fulton National Bank.

Q. What is your position there? A. I am senior vice-president.

Q. How long have you been senior vice-president at Fulton? A. Approximately three years.

Q. Where were you employed before becoming senior vice-president? A. I was with the Fulton National Bank for eleven years. You want prior employment?

Q. Just very briefly, yes. A. Well, prior to that I was with the Curtis **[152]** National Bank in Miami Springs, Florida for three years. Prior to that, the Anniston National Bank in Anniston, Alabama for approximately five years; and, the Citizens & Southern National Bank in Atlanta for approximately thirteen years.

Q. Could you give us a brief idea of just what is involved in your particular area at Fulton National? A. Well, I have just recently taken over the supervision of our loan division, which generally covers all of the lending activities of our bank in all the departments that are engaged in lending.

Q. Mr. Megar, are you generally familiar with the correspondent services offered by Fulton National? A. Yes, I am.

Q. Do you know how Fulton National defines correspondent services? A. You mean—are you referring to this list that we have of various services?

Q. Well, first of all, I would just like to ask you if you, yourself, have any particular definition of what you mean by correspondent services. A. I don't know that I have got a well-thought-out definition, but I think, as a general statement, we do practically anything they ask us to do if they carry enough balances to pay for it, that is legal.

[153] Q. Could you list what you consider the major correspondent services offered by your bank? A. I think heading the list of major services would be check-clearing.

Q. Excuse me just a moment. You have a list up there? A. Yes.

Q. Let me show this to you; would this be a copy of the list that you have? A. Yes, this is a Xerox of it.

Mr. Kinkaid: Does Your Honor have any objection to this, sir?

The Court: Why don't you put it in as an exhibit; then we have got that much behind us.

The Clerk: This would be Government Exhibit 194.

By Mr. Kinkaid

Q. All right. Since we now have this as an exhibit, why don't we just go through and perhaps you could just tell us briefly something about each one of these. You want to make sure that if whatever——

The Court: Why don't you get him to say period. Have you heard the previous two witnesses?

[154] A. I have only heard a part of the two, Your Honor.

The Court: Well, it would be more helpful, rather than confusing the Court, rather than getting slight differences between the same services, where I'm sure I can't recall the differences, if there are any substantial differences in what the Fulton considers under these headings, I would like to have that. Rather than going back over, you know, substantially the same identification or definition.

With respect to the items before that, do the services which the Fulton performs under those various headings correspond very closely or very generally to what the First National performs with respect to the same services?

A. I would assume so, but I would be glad to expand on any of them.

Mr. Kinkaid: Your Honor, may I suggest I think that some of these—the terms look very similar to the terms we have already heard from Mr. Padgett and Mr. Farr.

The Court: We have got transfer of **[155]** funds; I have heard that twice; coins and currency shipments; I understand that. Handling of collection items, participation in excess loans, investment counseling, safekeeping. I have heard that from the Trust Company, exchange of credit information, data processing, personnel training, consultation.

[156] Q. Now, some of these, Your Honor, I think——

The Court: Why don't we do this, I don't think this is an area where we need leading questions, I don't think it's critical. If you know of some differences, I don't mean substantial or big, but of some that would be significant differences, why don't you bring them out with respect to these items rather than let's going through the list again.

Mr. Kinkaid: I wasn't proposing to go through the entire list. I think you're right, but I haven't exactly sat down and analyzed the three banks to see if there were any significant differences.

The Court: Go ahead.

Mr. Kinkaid: Why don't we go through a few of these that could be more judgment things than something like a check collection, which we have pretty well cleared up, I hope.

Why don't you just tell us briefly what exchange of credit information means to Fulton National to see if there's any difference than what we have already here.

The Witness: This is a service in the context here, of service offered to the correspondent banks. They may have occasion to inquire about an out-of-town business and they may call on us as their correspondent to develop that ground information for them, which we do **[157]** as a part of our service to them. This would occur in cases of new plants and new businesses moving into an area where our correspondent serves people that they don't know and haven't dealt with before.

Q. In those situations, would anyone from Fulton call on the account with someone from the correspondent bank? A. This has been done, but generally it's more of an inquiry arrangement.

Q. Now, the item that's marked personnel training in specialized areas and placement of personnel, could you tell us what that involves from the standpoint of Fulton National? A. Well, from time to time, some of our correspondents may ask us to teach their personnel how we handle a particular type of loan or how we handle a particular type of transaction. In those instances we have actually brought them, allowed them to come into our bank and visit, spend time in the departments in which they have an interest. The placement of personnel is generally about the same as, I believe, the previous witness testified. If we hear about a job opening, we hear it from someone who is looking for a job, and we sort of tell one about the other.

Q. Now, would you go over with us the next item, the consultation on operation, procedures and forms? A. We are frequently, in performing data processing services, particularly we are frequently asked by our **[158]** correspondents to give them advice on how to handle this type of transaction or that type, and we in the data processing end of it actually send personnel to their bank to help install systems and to help monitor systems and to see that proper procedures are being carried out to make the system effective and useful, too.

Q. So far as trust services are concerned, if a customer of a correspondent bank of yours wishes to obtain trust services, would he remain a customer of the correspondent bank as to other things while becoming a trust customer of your bank? A. Yes, this would be in the correspondent's area where the correspondent bank did not have trust powers and wanted to accommodate this customer and asks us to get into the picture to assist them.

Q. Where does the referral of account fit in here, is that what you described just a few moments ago on the National? A. This would probably be a situation where perhaps an Atlanta account was opening a branch in a town where one of our correspondent banks was located and we would recommend our correspondent and put them in touch with the proper people to enable them to solicit the account.

Q. Have you heard the discussion of the Federal funds position taken by Trust Company and/or First National? **[159]** A. I heard some reference to it in the last witness' testimony.

Q. Does Fulton National take a position, if that's the right word, in the Federal funds market? A. Yes, we make a market in Federal funds daily for our correspondent banks. We buy from them any funds which they wish to sell us and we either use the funds in our own possession or we sell them in the national market.

Q. With respect to Master Charge, you have here, in parens, agent. First of all, would you tell us what that means? In other words, the term, agent. A. The Master Charge program is set up so that a bank can issue a Master Charge card and it can own and retain the receivables that were generated by the card and all the profits and revenues from that, and the losses from [illegible] that may accrue to that operation, or they may become an agent bank in which case the correspondent bank would issue its card with its name on it. But, there the Fulton would buy the receivables and run the credit risk and maintain those as their own accounts. This would be an option of the correspondent bank. In the case of an agent bank, the correspondent would only get a certain portion of these fees and not the total interest accruing from those, the charge card usage.

Q. Does your bank perform any payroll accounting for any of its correspondent banks or any of their customers? **[160]** A. Yes, we do, some of both.

Q. Now, to your knowledge, what banks, other than banks headquartered in Atlanta, are presently offering correspondent services to banks located in Atlanta? A. I think banks in Birmingham are offering services to some Georgia metropolitan area banks, perhaps some in Chattanooga, Tennessee. Those are the only two, well, that I can specifically recall.

The Court: What kind of services do they offer, I mean, a full gamut of the services?

The Witness: No, sir, it would not be quite as extensive because of the distance involved.

The Court: What is it, loan override?

The Witness: Loan override. One of the banks in Birmingham is offering a program to buy supplies at a discount, some data processing, but they couldn't offer——

The Court: Would it be principally fee services?

The Witness: Yes, sir, I think that's right, except that in many cases they can interchange fees from balances.

The Court: Is it feasible for a bank to have a principal correspondent bank at a distance of 120, 150 miles?

The Witness: Well, now, in this context, are we speaking of small banks in metropolitan Atlanta?

[161] The Court: Yes, start with them.

The Witness: Yes, sir, it's possible, but it's not very practical to do a full service job that far away because, especially in check clearing, checks that are generated in this area have to wind up in the Federal Reserve Bank of Atlanta if they are Georgia checks.

The Court: That was the point I was getting at, paying through, it through balances generally, it would seem to me

that you're sort of going around the horn to maintain your account in Birmingham or Chattanooga.

The Witness: That's correct, sir.

Mr. Kinkaid: We have no further questions.

Cross-Examination

By Mr. Doyle

Q. How frequently would you say that Fulton is asked to help a correspondent find new management, say, president? A. This is a real difficult thing to answer, three or four times a year, two or three times a year, something. We may go six months and not even be asked. It's not a daily or weekly occurrence.

Q. And on those occasions, do you actively go out and beat the bushes looking for somebody at that bank? A. Usually, no.

Q. You cross-reference these, if you have them in your file? **[162]** A. That's correct.

Q. On those occasions, do you look inside Fulton in the management ranks for a bright young man who is on the go to supply to them? A. No, sir.

Q. Now, when a correspondent bank which is being organized, do you offer, or when a new bank is being organized and they come to you for advice and the rest, do you offer advice to them on the selection of stockholders, who they should sell their stock to? A. No.

Q. Do you sell a significant amount of the stock, or place a significant amount of this stock of this correspondent, say, a majority of the stock with your officers and employees? A. No.

Q. In the normal instance, do the directors come to those banks because of the relationship that is going to exist with the Fulton? A. No.

[163] Q. Do you, as a correspondent banker at Fulton, at your initiative, provide continuous management review and advice to the correspondent bank? A. No.

Q. When Fulton is taking a large participation in dollar amount on a loan that is originated by the correspondent, do you generally want to take an active part in setting the terms and conditions of the loan? A. It would depend on the size of the loan in relationship to the size of the bank that is offering the loan to us, in their own expertise in the field and——

Q. Would it generally follow that the larger the loan, the greater your interest in terms and conditions of repayment, collateral and that sort of thing? A. Right, that's correct.

Q. Do you presently sell any umbrella pension and profit-sharing plan to correspondent banks? A. No.

Q. Now, you have had experience in the Atlanta areas as a banker for some time, Mr. Megar. Are you familiar with the C&S five-percenter correspondent associate that is involved in this lawsuit? A. Generally, yes.

Q. In your view, is that relationship the same **[164]** as the normal correspondent relationship? A. No.

Q. Would you liken it more to a franchise situation, where they have our name? A. Yes.

Q. And there is a certain amount of responsibility that follows that name? A. That's right.

Q. Do you look at a five-percenter, C&S five-percenter from a competitive standpoint any differently from your vantage point over at the Fulton, than if it were a C&S branch? A. No. In fact, we have to stop and think, I suppose, which is which.

Q. In your experience, is that the public impression as well? A. Yes.

Q. So long as the banks have the C&S name and the C&S people, do you see, from your vantage point at the Fulton, that there will be any competitive effects from merging those banks? A. No, not at the present structure of it.

Q. Do you see any benefit to the public if these banks were required to be independent of C&S? A. No, I cannot.

[165] Q. Do you have any views about problems of management or capital that independent banks will have in this area?

Mr. Kinkaid: Your Honor, this I have to question, this line. It's already gone about 3,000 miles beyond any of the subject matter which we briefly covered with Mr. Megar. I think pretty soon—I think we have already even had a touch of psychological examination here as to what Mr. Megar knows about the public view of the C&S five-percent banks. This is about as far as we can really go here.

Mr. Doyle: Well, if the Court please, Mr. Megar is talking about types and kinds of correspondent relationships.

The Court: I know, but you are talking about competitive effects.

Mr. Doyle: Beg your pardon, sir?

The Court: You were talking about competitive effects of merger, I thought. That was the significance of the last answer I got.

Mr. Doyle: Well, sir, I think competitive effects come from normal correspondent relationships, and of course, our point, that **[166]** different competitive effects come from these and——

Mr. Kinkaid: Mr. Megar didn't talk about correspondent relationships. All he talked about were the correspondent services that his bank sells to correspondent banks, period.

The Court: Well, I will direct counsel to remain—keep the cross within the scope of the direct. If he wants to go into a new area, you may recall this witness at the time of your direct case.

Mr. Doyle: If the Court please, on the plaintiff's summary of the witnesses it was going to call and subject matters they were going to testify to, Mr. Megar was also generally suggested for the subject matter of the geographic areas in which banks compete, and I think there was something akin to that on the—I will read it precisely.

The Court: I still maintain that you must keep your cross within the direct. If there is an area that counsel does not cover with this witness, and it is essential to your case, you would have the privilege of recalling this witness at the proper time.

[167] By Mr. Doyle

Q. Mr. Megar, have you, at Fulton, taken on any new correspondent banks in Fulton and DeKalb Counties since 1970, when the branching law changed? A. I am not sure that we have. The latest one that I can recall we took on was the Stone Mountain situation, and I don't know exactly whether that fell within '70 or prior, before or after.

Q. With branch banking countywide at this time in the state of Georgia, what effect on the Fulton does location of a correspondent bank have on Fulton's decision as to the location of the branch? A. Would you mind rephrasing that, please?

Q. Yes, sir.

What effect does the location of the correspondent of Fulton have on Fulton's decision as to the location of a branch? Does it have an effect? Does it enter into your decision-making at all? A. Yes, sir, it is bound to sooner or later. Until the banking law changed, permitting countywide branch banking, Fulton had its branches solely within the city of Atlanta and the city of Decatur. With this change in the banking law, we now can branch into Fulton and DeKalb Counties and the outlying areas where we have correspondent banks. Thus far, we have not **[168]** chosen to put branches in direct competition with correspondents, and this decision, sooner or later, may need to be made. And it, of course, would not be an easy one to make.

Q. I suppose the difficulty is obvious, but would you just elaborate on it enough so that it is on the record and we know what we are talking about? A. Well, we have correspondent banks where we do data processing. We maintain account balances, we have access to the confidential information generated by those banks and serving their customers. And if we would put a branch directly across the street from those banks, which we might be permitted to do under the law, then, we would have a possible ethical problem of do we continue to be their correspondent and at the same time compete with them for their own customers?

Q. In your business as a corporate banker, does the Fulton provide periodic internal audit for its banks? A. No, sir.

Q. For its correspondent banks? A. No, we do not.

Q. Does the Fulton appoint a senior officer of the Fulton to serve in a regular capacity as an advisory director on the boards of the banks? **[169]** A. No.

Q. Do you offer blanket insurance coverage to the group of your correspondent banks, that would include fidelity coverage, safety-deposit coverage, liability? A. No.

Q. Do you offer your correspondent banks participation in the Fulton's own pension and profit-sharing plans? A. No.

Q. Do you provide at Fulton a pool of personnel which is available to meet the demands caused by peak periods of work or illnesses and the like of your bank correspondent? A. No, we don't.

Q. Do you receive, on a regular sort of basis from your correspondent banks, budget and performance projections, where they are going and where they expect to go? A. No, not on a regular basis.

Q. Do you on a regular basis—then, it follows that you do not on a regular basis sit down and review performance against the projections? A. That's correct.

Q. Do you provide standardized general-ledger accounting systems to your correspondent banks? **[170]** A. No, not on—no.

Q. On a regular sort of basis, do you provide advices as to changes in law, such as wage-price, Regs. Z and that sort of thing, in the same way as you do for your branch managers? A. No.

Q. Do you prepare income-tax returns for your correspondents? A. No.

Q. Do any of your correspondents—do you allow them to use your name or corporate identification or logo? A. No.

Q. On a regular basis, do the correspondent employees and officers come to Fulton's training schools and programs which you run internally for your own employees and officers? A. Not on a regular basis, no.

Q. I suppose it goes without saying, Mr. Megar, but am I correct in assuming that as to all of the services that you offer, not all of them are accepted by all of your correspondents? A. That's correct.

Q. And it is at their initiative as to which ones they take? **[171]** A. That's correct.

Q. Very rarely do you offer them advice independent of what is asked of you? A. That's correct.

Mr. Doyle: All right, sir. That's all I have on cross.

Mr. Kinkaid: Your Honor, I would first sort of like to do a little house-cleaning, and by a motion to strike, get rid of the dialog prior to my objection that went beyond the scope. I guess we would have to go back when the transcript is available and see what portions——

The Court: I would overrule it anyway, so go ahead.

Redirect Examination

By Mr. Kinkaid

Q. In connection with competing directly with your correspondent banks, if I understood your discussion of that correctly, it seems to come primarily in the data-processing field; am I correct on that? A. Well, that's correct, and yet it comes—really covers the whole scope. It is hard to be a competitor of your customer and still maintain the customer relationship that is sort of fundamental.

[172] The Court: The intensity of that problem varies in proportion to the magnitude of the balance?

A. Yes, sir, that's correct, absolutely.

Q. Have you, with any of your correspondents, or did you indicate that you do not compete directly with any of your correspondents? A. We have not yet chosen to put new branches in close proximity to our correspondent banks, except in one particular instance. We have a branch in the Stone Mountain industrial area, which we had applied for prior to the C&S, Stone Mountain, becoming a correspondent of ours. They knew that.

Q. I think you indicated that in answer to a question about being routinely presented with projections or budgets from correspondent banks, and I think, if I recall correctly, your answer was not on a regular basis. Does that mean that you get such projections on an irregular basis or less than a regular basis? A. When we finance the controlling stock of a small bank, we sometimes, in evaluating our collateral, we ask for operating statements and earnings projections. But, it is usually in every instance only when a loan is involved on the stock of that bank.

Q. By that, do you mean that you have lent money **[173]** to individuals to purchase the stock and the stock is pledged as collateral; is that it? A. Right.

Q. Likewise, in reference to the training classes or seminars, I think the question may have been, that you indicated they were not attended by correspondent people on a regular basis. Does that, again, indicate that these are attended on an irregular basis? A. Well, I was trying to—what I was really thinking of is my previous testimony where we had personnel come in for specialized instruction on a particular thing. This would not necessarily be a training class, although it might, in a given area. But, more generally, it is individualized-type instruction. But, this is only when the correspondent asks us to do it for a specific person or a specific group of people.

Mr. Kinkaid: No further questions, Your Honor. Thank you very much, Mr. Megar.

The Court: All right, you may step down.

Mr. Hodgson: May we have just two minutes, excuse me, Your Honor; before the witness is excused, may we have just two minutes?

[174] The Court: Oh, sure. Mr. Megar, would you wait just a minute?

A. Yes, sir.

Mr. Doyle: No further questions, Your Honor.

The Court: All right, you may step down.

[175] Mr. Kinkaid: Your Honor, I have just a slight problem. It's not really a problem. This witness Mr. Meager will conclude sort of a section of our presentation. The next witness will be an entirely different, quite a different area and it's going to take, certainly a lot more time. I believe, both on direct and on cross than we have between now and 5 o'clock.

The Court: I will leave it up to you. All I'm going to keep you to, is a Wednesday, 5:00 P. M. closing.

Mr. Kinkaid: We will keep to that.

The Court: We will stand and recess, then, until 10 o'clock tomorrow.

(Whereupon, court was recessed at 4:15 o'clock P. M. to reconvene at 10:00 o'clock A. M. Tuesday, September 26, 1972.)

[177] The Court: Is everyone ready to proceed?

Mr. Kinkaid: Good morning, Your Honor. Before we start with our first witness, there was a couple of remarks we would like to address with respect to some of our exhibits.

The Court: All right.

Mr. Kinkaid: Mr. Frisbie will make those remarks because he is more familiar with the mechanical things than I am.

Mr. Frisbie: Your Honor, the defendants filed their objections to our documents yesterday, and the plaintiff has done likewise, and both are skeletal objections giving the basic grounds for objection. There has been some discussion between the plaintiff and the defendant as to plaintiff's Exhibits 42 through 75, and 76 through 101.

Now, the first are worksheets used by Dr. Scogstad, our economic expert, wherein he transferred some data from the printouts, which were submitted by the various banks in Fulton and DeKalb Counties in response to our subpoena.

These worksheets were submitted mainly to allow defendants the opportunity to check the accuracy of his figures. Now, these have not been objected to as far as the admissibility is **[178]** concerned, but defendants have noted in their statements of objections that the charts compare the IPC demand deposits for all the other banks in the Atlanta area with total demand deposits for the C&S National Bank and each of the defendants, and C&S DeKalb.

And, to that extent, they have noted that they are inaccurate. Okay. The same thought would have to apply to Government Exhibits 76 through 101, since these figures were also taken

from the same printouts. Now, the parties have now agreed that the figures for C&S and each of the defendants and C&S DeKalb are reasonable approximations of the IPC demand deposits for the defendant banks, and for C&S DeKalb for mid-year 1972. And, I bring this up now just to remove any cloud that might have appeared or might have been raised as to the accuracy of those figures, and whether they tend to show what the title of each chart states that they purport to show.

The Court: Is that a correct statement?

Mr. Doyle: Yes, sir, I think so.

The Court: Thank you.

Mr. Frisbie: The Government would like to call as its first witness for today **[179]** Mr. J. Angus Parker.

[180] Whereupon,

JAMES A. PARKER,

was called as a witness by and on behalf of the Government, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Frisbie

Q. Good morning.

Mr. Parker, would you state your full name, please? A. James Angus Parker.

Q. And what is your present occupation? A. Vice President, Peoples Bank, Lithonia.

Q. How long have you been employed in that position? A. Eleven months.

Q. Where did you receive your initial training in banking? A. It would be with C&S, LaGrange.

Q. And when did you start employment with the C&S Bank in LaGrange? A. 1952.

Q. Where did you go from that position? A. From LaGrange, I came to C&S DeKalb, Avondale.

[181] Q. And what position did you hold at Avondale? A. Assistant Cashier-Assistant Vice President.

Q. How long did you stay at C&S DeKalb? A. Four and a half years.

Q. When you left C&S DeKalb, where did you go? A. I went to Stone Mountain.

Q. What was the name of the bank when you started your employment? A. Bank of Stone Mountain.

Q. Could you tell us when the name of the bank changed? A. It changed March 15th, 1966.

Q. So that would have been one month after you came to Stone Mountain? A. Right.

Q. And what was your position at the C&S Bank of Stone Mountain? A. President.

Q. How did you learn that there was to be an opening at the C&S Bank of Stone Mountain? A. Mr. Starks and Mr. Hall talked with me in the fall of 1965 in regards to going to Stone Mountain for a month while Mr. Gibson was in the hospital and then to check further, further about the possibility of going there permanent.

[182] Q. Would you identify Mr. Gibson, please? A. Mr. Gibson was the President of the bank at that time. He came with the bank in 1959.

Q. And who was Mr. Starks that you referred to? A. Mr. Howard Starks was with the C&S branch supervision.

Q. And who was Mr. Hall that you referred to? A. Mr. Hall was with C&S as the Comptroller and maybe later first Vice President.

Q. And you went out there for this temporary period while the President was ill. When did you next learn that there was an opening for the Presidency of that bank? A. February, first of February.

Q. And who contacted you at that time? A. Mr. Starks and Mr. Hall had a meeting with the Board in my presence.

Q. Which board? A. The Board of the Bank of Stone Mountain.

Q. Did Mr. Hall and Mr. Starks tell you anything at that time about the relationship of the Bank of Stone Mountain and C&S Bank? A. Not really, it was a known factor that it was a five per cent bank.

Q. Are you aware of the term correspondent **[183]** associate? A. Yes, sir.

Q. Was the Bank of Stone Mountain referred to as a correspondent associate? A. Yes.

Q. When you went to—prior to the time you assumed the job as President of the Bank of Stone Mountain, were you given any instructions by anyone at C&S as to what your functions would be at that bank? A. It seemed that the earnings of the bank were not sufficient to pay the cost of the new building that they had just gotten into, maybe in the middle of '65, and my job was to go out and see if we couldn't get the earnings up.

Q. Were you given verbally any instructions on what you should do? A. Nothing other than just that statement.

Q. Who made that statement to you? A. Mr. Hall and Mr. Starks.

Q. Both of them did? A. Right.

Q. And this was all the instructions you were given; is that correct? A. Uh huh (indicating the affirmative).

[184] Q. You identified that Mr. Walt Gibson was the president before you? A. Yes.

Q. Did you personally know Mr. Gibson? A. Yes.

Q. Do you know what his prior banking experience was, his immediate prior banking experience? A. I got acquainted with Mr. Gibson after he went to Stone Mountain; I didn't know him when he was supposed to work at C&S, maybe at Tenth Street.

Q. Do you know who was the president before Mr. Gibson? A. Mr. Arthur Drew.

Q. Are you personally acquainted with Mr. Arthur Drew? A. Yes.

Q. Do you know what his prior banking experience was? A. Not really, just that he had worked for C&S and was retired.

Q. Do you know when the Bank of Stone Mountain opened for business? A. In July of '57.

Q. And was it Mr. Drew that was the first president at that time? **[185]** A. Yes.

Q. Did Mr. Drew keep any position in the bank when he stepped down from the presidency? A. He stayed on the board.

Q. Was he a full director? A. Yes.

Q. Or an advisory director? A. Full director.

Q. When you arrived at the bank, how many officers were at the bank? A. Two.

Q. Two officers. Who were these officers? A. Bob Maughon and myself.

Q. Do you know Mr. Maughon's prior banking experience? A. Yes.

Q. What was it? A. With C&S, also with the Bank America and Valley National, Phoenix.

Q. Do you know what his immediate prior banking experience was prior to going to Stone Mountain? A. In the area of maybe trust department.

Q. I mean for which bank? A. For the C&S.

Q. Mr. Parker, did you ever have occasion to **[186]** hire any new personnel while you were president of that bank? A. Yes.

Q. Did any of these personnel subsequently become officers? A. Eventually.

Q. Who were these persons? A. The one that—the only one that became an officer was Gene Lockeridge.

Q. And what was his prior banking experience? A. With the C&S.

Q. Was Mr. Lockeridge employed by the Bank of Stone Mountain at the time you came? A. No.

Q. How did you acquire Mr. Lockeridge in your employment? A. From the C&S.

Q. From the C&S Bank. Did you ever have occasion to hire employees for full time replacements? A. Yes.

Q. Where did you get replacements for your employees or additions to your employees? A. From most any source that was available.

Q. Where did you usually go to, was there any particular place that you usually went to to seek **[187]** replacements for your personnel? A. In the area of female, it was more or less hired from the local area. Men, we tried to go to C&S.

Q. And who did you contact at C&S about this? A. It would be the ones that would be in supervision, branch supervision.

Q. Do you have any idea how many men personnel you obtained from C&S? A. Two.

Q. Two. How many men did you hire total? A. Three.

Q. Now, would this have been during the period of time that you were associated with the C&S National Bank that you hired three personnel, three men personnel? A. No, two, and then the third one came after the association.

Q. All right. So you hired two men personnel and both came from C&S during the period you were associated with C&S. A. Right.

Q. Then did you ever have occasion to have a need for temporary help, personnel help? A. Yes.

Q. Where did you obtain any temporary help? **[188]** A. Mostly local.

Q. Mostly local. Did you ever get any temporary help from the C&S National Bank? A. Not until after the association, and that was in the area of maybe retired C&S folks that would maybe be working part time.

Q. Did you go to C&S National Bank? A. No, they came to us.

Q. Mr. Parker, did your officers, or your employees, any of them, receive any training to develop any of their particular skills in banking while they were employed at your bank? A. Yes.

Q. Where did they receive this training? A. It would be training through C&S or schools that would be provided.

Q. Did the C&S holding company own any of your bank's stock? A. Yes.

Q. Do you know when this was bought? A. In '59.

Q. Who were your correspondents, did you have any correspondent banks while you were at the C&S Bank of Stone Mountain? A. C&S National.

[189] Q. Were they your sole correspondent? A. They were until C&S DeKalb became a correspondent in maybe 1970, latter part of '69.

Q. And what function did C&S DeKalb play in your correspondent relationship? A. It was maybe—I don't—I don't fully know.

Q. Does the term depository bank have any particular meaning to you? A. Yes.

Q. Would you explain to the court what a depository bank is. A. It would be the bank that—our bank or the bank that we would be the correspondent bank that would be using to clear our items through their system using their processing sources.

Q. Who were your depository banks? A. It would be C&S National.

Q. Was that your sole depository bank? A. Yes.

Q. Does the term depository bank have anything to do with keeping money on hand at that bank? A. Yes.

[190] Q. Could you explain that? A. It would be in the work that they do for us. There should be a compensating balance carried with the bank to enable them to process and at least break even on the job that they would be doing for you.

Q. Did the Bank of Stone Mountain or did the C&S Bank of Stone Mountain have a pension and profit sharing plan while you were President? A. Yes.

Q. Who administered this plan? A. The C&S National.

Q. Did you have any health, accident or disability plans for your employees? A. Yes.

Q. And who administered these plans? A. C&S National.

Q. Did your bank receive any publications from C&S National? A. Yes.

Q. What publications would these be? A. Be operating guides, bulletins and such.

Q. Okay. In terms of employee publications, did you receive any of these? A. Meaning personal?

Q. Did you receive any form of newspapers or—— **[191]** A. Oh, it would be—it would be the monthly newspaper that we would circulate among the system.

Q. Did you regularly and systematically receive this newspaper? A. Right.

Q. Did your employees have access to Camp C-S-ta? A. Yes.

Q. Do your employees have C&S check cashing privileges? A. Yes, sir.

Q. Did your employees have that C&S Bank Club privileges? A. Right.

Q. Was your bank ever given any manuals or guides that were published or were published by C&S? A. Yes.

Q. I would like to show you a copy of what has been marked Defendants' Exhibit 270 and ask if you can identify this? A. Yes.

Q. What is that, Mr. Parker? A. Consumer Credit operating guide.

Q. Would you look at that one more time and see if that is the correct title for those volumes?

Now, I must say that the covers on there are **[192]** not the original covers as we understand it. They are covers that we

have put on there, they are copies, they are our copies, the plaintiff's copies. A. This is Consumer Credit operating guide and this one is the general operating guide.

Q. Mr. Parker, I would like to show you what has been marked as Defendants' Exhibit 311 and see if you can identify that? A. Yes.

Q. Could you tell the Court what that is? A. It would be Operating Bulletins that would be circulated among the banks.

Q. Okay. You can put those down for a moment. Now since I do not have the original of the general operating guides there, I must ask you to explain it in a little bit—was the general operating guide a loose-leaf type manual that you could add pages to and take pages out of as changes occurred? A. Yes.

Q. Did you regularly and systematically receive changes or additions to these manuals in front of you? A. Yes, sir.

Q. Was correspondence in the form of changes or additions to these manuals addressed to your bank by name? A. Yes.

[193] Q. In the addressee portion of the correspondence, did it say——

Mr. Hodgson: If Your Honor please, he's leading the witness very precisely. I object to the form of the question.

The Court: All right, sustained.

Q. Could you explain how these were addressed to you? A. It would be addressed in the envelope that would come in, but it would be addressed to the President affiliates and President of the correspondent associates.

Q. Now the letter that you described, was that on the envelope that came in or on the document itself? A. On the document.

Q. Was this correspondence that came to you always addressed to you the way you described it, the latter part? A. Mostly, most of the time.

Q. When it was not most of the time, how did it—how did you receive it? A. It would maybe have President of associate correspondent left off.

Q. Would there be anything added to the document to show that you should be on the distribution list? A. No.

Q. Why would you get a copy of this document, **[194]** then? A. I don't know.

Q. Mr. Parker, did your bank, when it was a C&S Bank of Stone Mountain, do any of its advertising on its own? A. Not too much.

Q. Why did you not advertise your bank? A. We were part of an advertising program that would be C&S Banks in Georgia. We would use the type advertising material in the statement and such that would indicate C&S Banks in Georgia.

Q. All right. Did you feel while you were President of that bank, that your bank benefited from the use of this name? A. Yes.

Q. Did C&S National Bank do any of your work on their computers? A. Yes.

Q. What were some of the things that were on the computer that your bank had? A. It would be the DDA or savings installment loans, payroll processing.

Q. Any others? A. We handled the C&S charge card.

Q. Could you explain what DDA stands for? **[195]** A. It would be the demand deposits that they would process for us, checking accounts.

Q. Are you familiar with the term proof and transit work, the terms? A. Yes.

Q. What is proof and transit work? A. It would be work that would be between say our bank and C&S National in the processing of our work for us that would be run through our proof machines and then would come back from them the following morning, the work that they would do for us.

[196] Q. So who did your proof and transit work for your bank? A. We handled it, as far as the proof operator on the scene, but it was sent downtown for proof. Well, not for proof, but for finalization of the process.

Q. Did your bank ever have any general liability insurance? A. Yes.

Q. Did your bank ever have any fire insurance? A. Yes.

Q. Did your bank—was it a participant in a blanket bond? A. Right.

Q. Who did you contact about paying for each of these services? A. It handled through the comptroller department; that would be a blanket or umbrella type coverage.

Q. When you say the comptroller's department, which comptroller's department are you referring to? A. C&S.

Q. Mr. Parker, can you tell me, in the context of banking, what is a racehorse sheet? A. That was referred to on a sheet that would have each branch or each bank listed, and in that would **[197]** include the participation of loans that each one had, as far as for this particular month. Then, the ratio that they arrived at investments on the deposits that you had available to how you invested them in loans and return on them, would have a ratio there as to how each bank was doing.

Q. How many banks were listed on this racehorse sheet? A. Oh, it could be maybe seventy banks.

Q. And you stated that they were banks and—— A. Branches.

Q. Banks and branches. Are banks and branches—first of all, branches of what bank? A. Of the C&S.

Q. And when you say banks, can you give me an idea of what banks were covered on that list? A. It would be banks throughout the state that would be listed, the five-percenters as well as the affiliates.

Q. Was the Chamblee National Bank on that list? A. Yes.

Q. Was the Citizens National Bank of Sandy Springs on that list? A. Right.

Q. Was the C&S Bank of Tucker on that list? **[198]** A. Yes.

Q. And the Bank of Stone Mountain was on that list? A. Yes.

Q. C&S Bank of Stone Mountain. Did you say approximately how many banks were on that list? A. Oh, around seventy.

Q. Seventy. Did you say that this was a statewide listing? A. Yes.

Q. When you spoke about a ratio, can you tell me what the ratio was your bank enjoyed at the time you became president? A. Ratio was around .80.

Q. .80. And what would be—what was generally considered as an acceptable or an average ratio? A. One Hundred, 1.0 should be the minimum.

Q. I see. On the average for the period from 1966 to 1970, can you tell this Court how your bank compared with the other banks on that list? A. Down through the years there it would be maybe 1.20, 1.40, but the last—in the middle of '70 it was 2.58.

Q. Is 2.58 high or unusual? A. One of the, I say, within the top five.

Q. Did your bank ever attain the top listing, **[199]** the top bank? A. At times.

Q. At times. Would you say generally that your bank was usually in the top quarter, or bottom quarter, or middle, or half or where? A. It would be in the—usually in the first five.

Q. Usually in the first five? A. First five.

Q. Places out of seventy? A. Uh-huh, right.

Q. Were there any other banks located in Fulton or DeKalb County that also ranked high on this list? A. Yes, Chamblee, Tucker, they would usually be, one or the other, in first. I remembered them because of their position that they would usually take.

Q. Had you ever had occasion for your bank to consider opening a branch office? A. Yes.

Q. Your board of directors ever vote on this? A. This was before the countywide branch banking bill was passed. I noticed that the city limit of Stone Mountain Bank maybe twenty-five years ago had an addition to the city, and in checking this portion that had been annexed, was near Memorial Drive, and in **[200]** acquiring a piece of property maybe that would touch this newly annexed portion could be further annexed to the city, and then maybe have a branch out on Memorial Drive that would give us some access to the public. Because we were back behind the city, and at the foot of the mountain, not in view of any traffic that would be—maybe a thoroughfare. In finding this piece of property, it was for sale, and I talked to my board about purchasing it. And they agreed after a couple of chats with them to go ahead and purchase this piece of property. And that was in—maybe in the latter part of '68, I think it was. The property was closed in May of the following year.

Q. Okay. I think my question was, did your board vote on whether to—I think the question was open a branch. Okay, I will rephrase it. Did your board vote on acquiring property for a branch? A. Yes.

Q. And what was the result of that vote? A. The property was acquired. It took a few months because Adair's was mixed in with the property, so we worked on it for maybe three or four months and got it to a point of closing in May of that year.

Q. Did your bank subsequently buy this property? A. The C&S National bought the property for **[201]** us, for it to be used as a future branch site.

Q. Can you explain how this happened to come about that your bank selected a piece of property and C&S National bought it? A. C&S offered to buy this piece of property and hold it for us, to keep us from having to use the money from what the bank there was operating on, which would be separate.

[202] Q. When you say C&S offered, who was this at C&S that you talked to about this? A. Mr. McIntyre.

Q. Who is Mr. McIntyre? A. He was in branch supervision.

Q. Do you know his first name? A. John.

Q. John McIntyre. Did you ever attend any meetings that were held at the C&S National Bank, Mr. Parker? A. Yes.

Q. Can you tell me what type of meetings you attended? A. It would be Wednesday morning meetings, would be Mr. Lane's meeting and then a credit meeting or credit review meeting afterwards.

Q. Was this held every Wednesday? A. Yes.

Q. Wasn't this your day off? A. Yes.

Q. Did any of the other correspondent associate Presidents attend these meetings? A. Yes.

Q. Do you remember seeing Mr. Hazelrig at any time at these meetings? **[203]** A. Yes.

Q. Do you remember seeing Mr. Connally? A. Yes.

Q. Or Mr. Hugh Lane? A. Yes.

Q. Or Mr. Fortuna? A. Yes.

Q. Mr. Harris? A. Yes.

Q. Mr. Berry? A. Yes.

Q. Did you attend any other meetings at C&S? A. I would be subject to attending other meetings, sometimes we would have a Saturday meeting which would be maybe not regularly, but called, maybe.

Q. Mr. Parker, do you know of any meetings that were sponsored or called by C&S that other correspondent associates were invited to that you weren't? A. No.

Q. Did you participate in the Goal Post Review Program? A. Yes.

Q. Can you explain to the Court briefly what the Goal Post Review Program is? A. This would be a performance maybe that you would **[204]** project yourself for the bank in deposits, loan volume, wills, just a number of things that you would project for a quarter at a time. This would be for the year. It would be reviewed quarterly.

Q. These projections that you made, did you write them down on a piece of paper? A. Yes.

Q. Where did you get this paper from? A. From branch supervision.

Q. And you said that this was reviewed. Who did you review these projections with? A. Branch supervision.

Q. Did the review program continue not only to your projections, but an analysis of your projections? A. Yes.

Q. And were these reviews held with the same people? A. Right.

Q. Did you ever have any persons on your Board of Directors that were also officers at C&S National or one of the affiliate banks? A. Yes.

Q. Were any of these persons full Directors in the sense that they had voting powers? A. They were at one time.

[205] Q. Do you know approximately when the time was that there ceased being full voting members on your Board of Directors, those who were also C&S officers? A. I don't remember exactly what time, but maybe in '68.

Q. After that period of time, then, did you subsequently have any C&S officers on your Board of Directors in any capacity? A. In the advisory capacity.

Q. Did they have to be elected by your Board of Directors in this capacity? A. It would be appointed, maybe.

Q. Did you ever have any other C&S personnel, excluding these other people, who were advisory Directors attend any of your Board meetings on occasions? A. Yes.

Q. What would they be coming for, for example? A. It would be maybe for any information that they could impart that would help in the operation of the bank.

Q. What did you consider was the function of the advisors on your Board of Directors? A. It would be a person that I could talk with that would help in the day-by-day operations of the bank in the system that we were using.

[206] Q. What kind of help were you looking for? A. It would be supervisory, any help that they could impart.

Q. Did you, you and your Board want these advisors on your Board? A. It wasn't any sign there about wanting them or rejecting them.

Q. Are you implying that you did not want them there? A. There never was any discussion had on it.

Q. Did any of the advisory Directors or persons who were full Directors that were also C&S officers at the time, did they ever make any suggestions or advice at these Board meetings? A. Yes.

Q. Did your Board adopt any of these suggestions or advice? A. They did.

Q. Could you estimate as to whether they accepted or how much advice that your Board accepted? A. From a standpoint of the number of things that they accepted or——

Q. Correct. A. I can think of maybe the profit sharing, the pension plan.

[207] Q. Without detailing the types of things that advice was given on, just considering the advice and suggestions that they made at the meetings, could you give us an idea of what the percentage of times that their advice was accepted?

Mr. Hodgson: I object to the form of his question because the answer could only lead to conjecture because you have got to know the sort of things, exact things. Now if Mr. Frisbie wants to ask him what was rejected and what was accepted, that is an acceptable question. Otherwise, I object.

Mr. Frisbie: I don't believe that's the case. He testified they gave regular advice and suggestions to the Board meetings. We are not concerned at this point about the specifics of the thing.

The Court: I will overrule the objection. A. I would think that up to a point, more things were accepted than at a time when more things were looked at and not really acceptable.

The Court: Was that time a geographical time, or what? A. It would be that, I think that.

The Court: Chronological or just what kind of a division?

[208] A. It would be, the years that I was there, would be maybe the first three or four years, more things were accepted than they were later.

Q. And why were—do you have any idea why at this later period of time more things were not accepted? A. Not no explanation as to why they would not accept certain things.

The Court: Who is they?

A. The Board of——

The Court: Are you part of the Board? Are you a part of one who is doing the accepting or not accepting? A. Yes.

The Court: You don't know why?

A. Like this, Your Honor, the statement would be in presenting to them quarterly dividends rather than annual, would be the fact that we don't want to pay quarterly, we want it all in one lump sum, and the Board would vote to continue on the annual dividend basis. That would be the action that would be taken on that particular issue.

[209] The Court: But you have no explanation for the change in attitude?

A. Not really.

By Mr. Frisbie

Q. Mr. Parker, did your bank lease any equipment from C&S? A. Yes.

Q. What types of equipment did it lease from C&S? A. I know one particular piece was the proof machine.

Q. Did your bank utilize the central purchasing facilities of C&S? A. Yes.

Q. Did your bank utilize any of the C&S mangament training? A. Yes.

Q. In what regards? A. It would be programs that they would offer for management.

Q. Would these be held at—where would these be held? A. They would be held at CSTA mostly.

Q. At Camp CSTA? A. Yes.

[210] Q. Did your bank ever receive any audits by C&S? A. Yes.

Q. What kind of audits were these? A. It would be a full audit, credit-review audit that would be maybe held quarterly; different portions of the bank would be audited at different times, and in the course of a year it would be considered a full audit.

Q. Did you ever have any surprise audits on areas that you were not anticipating audits? A. It would always be surprise.

Q. Did your bank, the C&S Bank of Stone Mountain, ever send any information on its loans to C&S? A. Yes.

Q. How often was this done? A. Monthly, a debtors list.

Q. You sent a debtors list to C&S? A. Yes.

Q. Did you send any other loan information to C&S? A. If there was a loan, that would be maybe large enough that the bank would not want to maybe—or could not handle it, it could be reviewed at the credit review meeting and maybe participation of other **[211]** banks with you on it.

Q. So this would be a loan that your bank could not handle by itself? A. Yes.

Q. Okay. Was there any other information on your loans that were sent to C&S? A. Could be a list that we would maybe get the credit department at C&S National to help us in credit investigation on a particular loan or a customer.

Q. Were any of your loans ever reviewed by C&S? A. Yes.

Q. How often was this done? A. Could be reviewed—well, they were reviewed every month at the directors' meeting, the debtors list of, say, ten thousand or fifteen thousand and above, would be circulated to the C&S National on a monthly basis.

Q. When you say they were reviewed at the directors' meeting, which directors' meeting are you referring to? A. The Stone Mountain directors' meeting.

Q. Okay. And my question was, were any of your loans reviewed by C&S? A. Not—not really, not before commitment, prior commitment.

[212] Q. Either way? A. No.

Q. Did you ever make any joint calls with representatives of C&S to solicit new business? A. I did.

Q. Do you know, Mr. Parker, of any services at all that were provided to other correspondent associate banks in the Atlanta area, in Fulton and DeKalb Counties, that you didn't get or have access to? A. If we didn't have it, it was maybe available for us through C&S.

Q. Can you think of any specific things that you didn't have that the other correspondent associates were receiving? A. It could be the company-account analysis program that we did not have.

Q. Why did you not have a company-account analysis program at your bank? A. The board at Stone Mountain didn't want to charge the small merchant that would be maybe processing a lot of checks, and not have too much deposit money with the bank; therefore, they could pay the larger fee for their monthly processing of their account, because it was based on so many items, I mean checks that would be cleared through their account, and as opposed to [213] their balance that they would keep, average balance.

Q. Did your board ever consider adopting this company-account analysis? A. No.

Q. Was it ever brought up at any of your board meetings? A. Yes, right.

Q. Who brought it up at your board meeting? A. I did.

Q. Was it your idea and suggestion to institute a company-account analysis at your bank? A. No, it was the—the C&S

system that would be using this type of assessment on the checking accounts.

Q. Did anyone from C&S National Bank contact you relative to suggesting or bringing up this program at your board meeting? A. Yes.

Q. Who was this? A. I got literature from branch supervision and it was Don Ingram, Joe Hall.

Q. And about what time was this, Mr. Parker? A. In the fall of '69.

Q. And you stated that you did present this to your board? **[214]** A. Yes.

Q. And what was the reason for rejecting it? A. They did not want to charge a small merchant that would be subject to a greater charge than the regular cost that was being assessed.

Q. Fine. Mr. Parker, did you ever discuss your plans for branching with C&S National Bank? A. Yes, the local board wanted to acquire this or put in this branch out on Memorial Drive, or any other site that they could have at the time that —at this time they talked with Mr. Hall, the one from my board that did talk with Mr. Hall was Joe—I mean, excuse me, was Hugh Jordan, talked with Joe Hall. And at that time it was a matter of wanting to check with him to see whether or not we could get th. help through them on this branching, and at that time Mr. Hall wanted to chat about maybe acquiring Stone Mountain as a branch. This was in 1970, in the first quarter of '70, I guess.

Q. And what was—did you subsequently have a meeting with Mr. Hall concerning this conversation? A. Yes.

Q. Who was in attendance at this meeting? A. It was Hugh Jordan, Kingsley Weatherley, myself, Dan Handley, Don Ingram, Joe Hall and Mr. Lane.

Q. Where was this meeting held? **[215]** A. At C&S National Bank.

Q. And do you remember the date of that meeting? A. It was the first week, week or two in May, 1970.

Q. Was there discussions held at that meeting relative to your plans for a branch? A. Yes.

Q. And what was the reaction of the representatives from C&S? A. They were wanting to acquire the bank at a later date under the plans that it would become a branch, since the countrywide branch banking had passed.

Q. Had your board ever discussed, prior to this time, a possible acquisition by C&S? A. No, not seriously.

Q. Did these statements—who made the statement that it was thought about, about making you a branch? A. Mr. Hall.

Q. Did Mr. Hall's statement come as a surprise to you at that time? A. Not to me.

Q. What was your reaction during that meeting to this plan, to their idea of making you a branch at some time in the future? A. Would be—maybe at that time I was in a **[216]** position to maybe feel like that I would either stay with Stone Mountain, if it was a disassociation, or else go somewhere else for employment. I didn't feel at that time close enough to C&S to be one that would go back with C&S from actions that had preceded this time.

Mr. Frisbie: Your Honor, with the permission of the Court, it has been about an hour. I would like to take a recess for ten minutes.

The Court: All right. We will take a ten-minute recess.

[217] Q. Mr. Parker, the meeting we were referring to before we took the recess, in that meeting—after that meeting was over, did anyone take any notes concerning what went on at that meeting? A. Yes.

Q. Have you seen these notes or a transcription of what went on at that meeting? A. I have.

Q. Did you sign those notes? A. Yes, sir.

Q. I would like to have you take a look at this document and see if these are the minutes.

Mr. Hodgson: If Your Honor please, I trust we will be allowed to see before he examines.

The Court: I am sure you will.

Q. Mr. Parker, do you agree that that is a true copy of the minutes that were transcribed after that meeting was over? A. Yes.

Q. Okay.

Your Honor, I'm not offering these in evidence at this time.

The Court: Give me some identification so I can put my notes a date or some description. All I have is the minutes of some meeting.

[218] Mr. Frisbie: These purport to be the minutes of an April 21st, 1970 meeting.

The Court: Of who?

Mr. Frisbie: That was attended by—as Mr. Parker has testified, Mr. Weatherly, Mr. Jordan, Mr. Parker and representatives from C&S, Mr. Mills Lane, Mr. Joe Hall, Mr. Don Ingram and Mr. Dan Handley.

Mr. Hodgson: I would like to help my colleague, it was a May 11th meeting, it wasn't April. It's a little unclear, it was simply notes of a meeting, not minutes of any formal body.

The Court: May the 11th and not April 21st.

Mr. Frisbie: That's correct, I stand corrected.

The Court: All right, and it involves the desire of Stone Mountain to acquire property in the name of C&S and that they want Stone Mountain to be a branch.

Mr. Frisbie: Not that they want to acquire property. I think Mr. Parker testified they wanted some advice as far as their branching plans and C&S's response.

Mr. Hodgson: I would make one or two other observations, if Your Honor please. First, we are familiar with this document from earlier proceedings **[219]** among the parties. Second, this document reflects the recollection of those who wrote it. I believe it was Mr. Weatherly and Mr. Jordan and not representatives from C&S, that is to say, it was written unilaterally and not approved by anyone from Citizens and Southern. I wish that point made clear.

The Court: You say you are not offering it?

Mr. Frisbie: No, sir.

The Court: At this time or ever?

Mr. Frisbie: We do not intend to offer this.

The Court: Why all the problem of identifying it?

Mr. Frisbie: Because we want to ask Mr. Parker some questions about this document, about a meeting that happened quite some time ago about which some detail is desired as to his memory of this.

The Court: Or maybe——

Mr. Frisbie: Refresh his recollection.

The Court: Maybe if you would ask him some questions, it would tie it in as to how it's relevant to this proceeding. It would be helpful.

Q. (By Mr. Frisbie) Mr. Parker, did you agree that this was a true copy of the notes that were transcribed after that meeting? A. Yes.

[220] Q. And do you agree at this time that all statements contained therein are your views on this matter as to what you remember? A. Right.

Q. During this meeting, did anyone from C&S make any representation to you and your group as to what would happen to your bank if you did not merge, if you did not agree to this merger? A. That we would be cut loose from the C&S system, naturally, and be subject to losing benefits that we would be enjoying at that time.

Q. What specific benefits were referred to, if any? A. Oh, I guess maybe it would be the tenure that some of us would have that would be interrupted.

Q. Tenure in what regards? A. With the C&S Bank.

Q. Were there any representations made as to the status of your employees? A. It would be a matter of them deciding whether or not they would come back to C&S or stay with Stone Mountain.

Q. Did anyone at that meeting state in one way or another that they believed one of those things you just mentioned would occur? **[221]** A. Could occur, yes.

[222] Q. Were there any representations made at that time as to the growth of your bank, the future growth of your bank if you did not merge? A. Possibility of the growth of the bank not enjoying in the future what we had enjoyed in the past by being an independent bank.

Q. Were there any representations made as to your personal status and how it would be affected? A. Naturally, I would—would be subject to losing tenure or benefits that I had enjoyed.

Q. Were any statements made regarding the branching of C&S National, if you did not merge? A. Could be a possibility of branches from C&S being out in that area in the future.

Q. What was the opinion of your—what was your personal opinion during this meeting as to the feasibility of going through with this merger, the possibility of a merger? A. With the board at Stone Mountain, with their feeling, I didn't think there would be a strong possibility of it being merged.

Q. Was there ever made any representations as to the obligation of your bank towards C&S because of your relationship? A. In that we had enjoyed growth and earnings **[223]** maybe because of being a part of C&S.

Q. Did you feel obligated in any way to continue through with any possibility of merger, of seeing it through? A. I felt like that under the conditions that existed between my board and C&S, that it wasn't very probable.

Q. Did you feel like you were running a C&S Bank at that time? A. I felt like that I had—I had been running a bank that was more C&S than it had ever been.

Q. Well, did you feel like you were running a C&S Bank at that time? A. I felt like that—that my board at Stone Mountain was affecting the efficiency of it being run like a C&S Bank.

Q. You stated earlier that all of your prior banking experience had been with C&S. A. Yes.

Q. Did you deviate from any of the C&S policies, to your knowledge, while you were running that bank? A. I had to at times, because of the board not agreeing with certain policies of C&S.

Q. What was the result of this meeting, this May meeting we were previously discussing? **[224]** A. A meeting by the board at Stone Mountain was held within a week of this time, in the month of May, and it was determined at that time that there would be a disassociation.

Q. Did your bank buy the stock back? A. Yes.

Q. When did this happen? A. It happened about mid-year, June, maybe.

Q. Did C&S National Bank remain your correspondent bank? A. No.

Q. Who became the next correspondent, primary correspondent for you? A. Fulton National.

Q. Did any of your officers leave your bank to go back to C&S National or any of its affiliates? A. No.

Q. For the year following your disassociation, how did your bank do in terms of growth? A. We grew approximately two and a half million in total assets, about two million in deposits.

Q. Was this a growth commensurate with the years when you were associated with C&S? A. It was.

Q. Was it higher or lower or about the same? **[225]** A. Each year seemed to be a little more growth in deposits and in total assets.

Q. Could you, then, when you had Fulton National Bank as your correspondent, get all the services that you needed from Fulton? A. Could not get the services from Fulton that we were getting from C&S.

Q. Such as? A. The audit review.

Q. Could you have gotten the audit review from any other bank in town? A. Not just as a correspondent bank.

[226] Q. Mr. Parker, the question I asked you was whether you could get all the services that you needed from Fulton National Bank? Does your bank—and then you said you could not get credit or did you say audits? A. The audit that we were getting from C&S.

Q. All right. Are audits available through private firms? A. Yes.

Q. Is this something that a bank needs on a regular basis, an audit? A. Yes.

Q. Were there any other services that you needed that you could not get from Fulton National Bank? A. It would be the services of maybe that only a bank that you are connected with in the fashion that we were connected with C&S, that maybe would not be available to any other bank that would be just a correspondent bank.

Q. Such as? A. Just any bank that we, at this point, as a correspondent of Fulton and First National Bank of Georgia, all of these banks, they are not in a position to give us the service that we were getting from C&S.

Q. But do you know of any specific services that you needed that you could not get from Fulton? A. The one service that we were getting that, **[227]** maybe of a major consequence, would be the audits review.

Mr. Frisbie: I have no further questions.

Mr. Hodgson: Could we have just a moment, Your Honor, only about two minutes.

Cross-Examination

By Mr. Hodgson

Q. Angus, I believe you testified at one point that the ratio of operating earnings to total assets in your bank increased from .8% to 2.58% while you were there? A. Yes.

Q. Don't you attribute a good bit of this to the fact that you brought C&S management to that bank? A. I feel like it was a matter of management that caused it because I put in a system there that would allow me to grow and at the same time, the only system I had enjoyed was C&S.

Q. You felt that this overall relationship was then necessarily beneficial to that bank, don't you? A. Yes, sir.

Q. Don't you feel then that this bank would have done better following June of 1970 had it continued as C&S Bank, than

it actually did? A. I can only say that the growth hasn't continued on the same relationship that it had in the previous years as an independent bank.

[228] Q. Don't you feel it would have done better had it remained a C&S Bank? A. From the standpoint of being with the C&S name, that would maybe attract people, that would not ordinarily come to the bank, there could be an area there that could be an increase.

Q. And Angus, as we have discussed, I guess the continuing of C&S management would have been of help, too; would it not?

Mr. Frisbie: Your Honor, we are getting into a pretty big area of speculation of what might have happened if all these things happened.

Mr. Hodgson: I believe the Government opened this up.

The Court: Let me find out if they did.

What was the purpose of putting this witness on the stand?

Mr. Frisbie: The purpose of putting the witness on the stand was to show that in all substantial respects the C&S Bank of Stone Mountain was no different than the other bank associates.

The Court: Wasn't it for the purpose of showing after this affiliation, they could get along without this affiliation with C&S?

Mr. Frisbie: That is part of it.

[229] Mr. Hodgson: I believe my question was, don't you agree then that the continued supply of C&S management and services would have been beneficial and would have increased its growth more than as an independent bank? A. Being a part of a network in the metropolitan area with C&S's name and system could be.

Q. You agree? A. Yes.

Q. And the more the Atlanta metropolitan area grows out to Stone Mountain and encompasses more of this would be so; isn't that right? A. I think so.

Q. Angus, I believe you said you came in February of 1966 to the Stone Mountain Bank? A. Yes.

Q. And soon after that, it changed its name to the Citizens and Southern Stone Mountain Bank? A. Yes.

Q. You stayed as President until October of 1971? A. Yes.

Q. And in fact, you stayed at that bank until the time of disassociation in June of 1970? A. Yes.

Q. Is that right? **[230]** A. Yes, right.

Q. Thinking back, Angus, when you went out there, you had a little difficulty even getting your qualifying shares; didn't you? A. Yes.

Q. You got criticized for this by the regulatory authorities? A. Yes.

Q. Why was it hard to get the stock? A. There wasn't any available.

Q. No one of the Directors or shareholders would make it available? A. Right, I repeatedly at each Board meeting asked for stock to, for qualifying shares.

Q. So that you could sit on the Board of Directors? A. Right.

Q. And you didn't ever get as much as the other five per-center Presidents were getting as an incentive to run those banks; did you? A. I only got qualifying shares.

Q. Yes. Angus, there were no C&S related people—by that, I mean, officers, Directors, employees of C&S, to any extent or friends of theirs, who had any shares of stock in this bank; were there? **[231]** A. Not to any great extent.

Q. Mr. Hall and Handley had their qualifying shares subsequently, I guess? A. Mr. Hall and Mr. Starks.

Q. Mr. Starks had their qualifying shares? A. Yes.

Q. Do you know of any others? A. It would be maybe Miss—the telephone supervisor at C&S had a few shares, Mr. Drew had some in his family.

Q. Incidentally, talking about Mr. Drew, he had been retired from the C&S before he went out there in the beginning; hadn't he? A. That's what I understand.

Q. And this bank began in 1967; didn't it? A. '57.

Q. I beg your pardon. In 1957, and it didn't have the assistance in its organization that Chamblee and Sandy Springs, and North Fulton and South DeKalb had; did it?

Mr. Frisbie: I object to that question. That is going back to a period of time when this bank was formed, a period of time before Mr. Parker came out there. He would have no direct knowledge of this fact.

Q. If you don't know, you can sure answer, I don't **[232]** know.

The Court: That's right.

A. I only know that the bank was organized in 1957 and C&S became a part of it in '59.

Q. Not until 1959? A. From the records of the bank.

Q. Yes, sir, and is it not true that the C&S came in at that time to help with a bad credit problem that had been discovered by the FDIC? A. Yes.

[233] Q. So these shares were all the shares that the C&S holding—and that was what the C&S holding company got, it is five percent; right? A. Yes.

Q. 1959, and that's all it or any of its friends ever got; is that not right? A. Right.

Q. And I believe that there was—you have told me that some twenty-five to thirty percent of the shares were held by the McCurdy family? A. Could be twenty-five or thirty with the relatives of the McCurdy family.

Q. Yes, sir. Now, turning from stock ownership to yourself as a manager, didn't you have some difficulty in asserting yourself as the president or chief executive officer of that bank? A. More in the area when I first went there in day-to-day operation of getting a system installed that would allow us to grow.

Q. What sort of trouble did you experience? A. The operation that was at the time, I guess, had been in existence since the bank was organized.

Q. Yes, sir. A. But, in changing the system and putting in the C&S system, I would find that it had been changed **[234]** back when I would recheck from having someone gone behind me and change it, see.

Q. So you had difficulty as a manager in installing the system that you wanted to install? A. Yes.

Q. Which is a system that was recommended by your training? A. Yes.

Q. And advice from the C&S. A. Right.

Q. And which would make C&S more able to help you; is this right? A. Yes.

Q. I believe—who was the chief executive officer of your board of directors? A. At the time that I went there, there was no chairman, but later it was Kingsley Weatherley.

Q. How did this come about? A. Oh, came about in maybe '69, by a recommendation from Mr. Hugh Jordan that he nominate him as chairman of the board, and he was elected at that meeting.

Q. Didn't Mr. Jordan tell you after disaffiliation, when you stayed with that bank, that if he had known you were one of us,

that is, that group in Stone **[235]** Mountain, he would never have voted to elect Mr. Weatherley as chairman of the board of directors? A. Yes.

Q. He told you that? A. Right.

Q. So, when you said in your earlier testimony they, that board, never felt that you were really with them, it meant that they were somewhat suspicious of what it was you were doing; did it not? A. Yes.

Q. And Mr. Bobby Maughon, who is still with them, was the gentleman who you had some difficulty with in getting your systems installed, isn't it? A. Yes.

Q. I believe you said that Mr. Maughon had been at C&S; hadn't he earlier quit the C&S before he went to Stone Mountain? A. No, he left C&S to go with Stone Mountain in '57.

Q. In '57. You talked about some things you couldn't get done earlier, Angus, like payment of quarterly dividends, and I believe a program to analyze company accounts in order to determine what charges would be made. A. Yes.

[236] Q. There was some testimony that this was not installed because it would be contrary to the best interest of some small business customers. A. Yes.

Q. Now, Angus, that program only set up a system by which you could analyze the cost of handling the account, didn't it? A. Yes.

Q. So that if a customer with relatively small balances had many transactions in his deposit account with you, each of which cost your bank money, you could determine whether or not this was a profitable account, a break-even account, or a loss account, couldn't you? A. Yes.

Q. And the system didn't say you had to charge that small merchant anything, did it? A. They just outlined a charge basis.

Q. A managerial tool which would allow you to know how

well you are doing with that particular account that was being analyzed; right? A. Right.

Q. So you didn't have to make the charge to the small business customer if you didn't want to later, did you? **[237]** A. It was determined by the board that we would not.

Q. It was determined by the board you wouldn't even put in the system, I believe you said. A. Yes, right.

Q. So the board decided you simply wouldn't have the information available better to manage your bank; right? A. Right.

Q. Were you there at the time there was some difference of opinion as to whether the bank would be—the new building, as distinguished from the original, temporary quarters, would be located on Main Street, as you say, back behind the town, between the town and the mountain or, that is, behind there or out on Main Street? Were you there when that went along? A. No.

Q. So you weren't a part of that discussion.

You referred to these general operating guides and consumer credit guides this morning, those large volumes over there, which you regularly got. Didn't you tell me that those weren't out there when you went? A. They were not being——

Q. Kept up? **[238]** A. They were not being kept up, were not being used to their advantage.

Q. Did you get them to use them to their advantage after you got there? A. To a degree.

Q. To a degree. You were unsuccessful, I gather, in getting them to use those guides as much as you wanted them to? A. Right.

Q. I believe you told me, also, that pre-approval was required of credits or loans over $1,000 unsecured, and $3,000 secured; is that correct? A. That was the policy that was in effect before I went there.

Q. At Stone Mountain? A. Or maybe at the time I went to Stone Mountain, yes.

Q. At the time, did you change this? A. I did.

Q. And did you put it on the C&S system of review the credit after the fact? A. Yes.

Q. Now, your difficulty in installing and following the C&S systems that you have talked about, didn't you get criticized for not being able to get the **[239]** board to go along with you by branch management at C&S? A. Yes.

Q. What was your response to this criticism? A. It would be that I had been there maybe, at this time, a couple of years——

Q. Yes, sir. A. ——and the question was asked, "How are you doing?" And I said, "Slowly, but surely; just can't go in and knock everything off the desk and start anew. You have to kind of gradually move it." But, was successful in doing so to this point by gradually turning it around, so to speak.

Q. To whom were you telling this? A. Mr. Handley.

Q. And what was Mr. Handley's response? A. If you don't do the job, we will get somebody else that will, see.

Q. As a result of this, did you feel that you had lost some of the confidence of Mr. Handley and those others in branch supervision in how you could do a job? A. That was a start.

Q. Yes. What else affected your feelings this way? **[240]** A. Well, other things that would exist from the standpoint of company-account analysis program, the quarterly dividend, some other day-to-day operational——

Q. I believe you testified earlier this morning that you didn't feel close enough to C&S to go back when there was the dis-affiliation; is that right? A. Right.

Q. Now, why didn't you? A. Because of what had happened in the previous three—three years.

Q. Why did you finally leave the Stone Mountain Bank? A. I found out that from the standpoint of working with the board there, that our philosophy didn't run parallel. It was just more or less something that didn't—we didn't seem to see eye to eye on anything, that that would be maybe my suggestions or actions that I wanted to put in.

Q. Can you give me some specifics as to that? A. It would be in the area maybe of growth-wise. We were maybe getting to the point at that time that they felt like they were not able to review everything that would be going on, even on a monthly basis, at the meetings.

Q. Angus, is it a fair conclusion that the board **[241]** at Stone Mountain, comprised of Mr. Weatherley and Mr. Jordan and others, McCurdy interests, never really accepted the C&S as their management or their leadership; is this not right? A. They would accept it to a degree.

Q. But they never really accepted it in full? A. No—not fully.

Q. As you put it one time, I think, they said they are there and we are here. A. (Nodding affirmatively.)

Q. These occasions when you met with C&S management and included were people like Mr. Harris from the C&S, Chamblee Bank; Mr. Fortuna from the C&S, Sandy Springs Bank; and Mr. Hugh Lane, from the C&S North Fulton Bank; Mr. Warren Berry from the C&S South DeKalb Bank, on these occasions and others, Mr. Hazelrig and Mr. Connelly, did you all compare notes as to how you were getting along with your various boards? **[242]** A. It was kind of a—some chit chat to a degree on how you would be fairing with your Board because it would be to, it was to my concern, more so than maybe the others because of what position I was in at Stone Mountain.

Q. And your relationship was not nearly so comfortable as theirs from those discussions? A. I felt like it wasn't.

Q. Now the discussion of May 11, if it was as you described it, the Board at Stone Mountain had never seriously considered favorably merging with C&S at any time, had it? A. Had not ever discussed it seriously.

Q. And had never considered it as a result in your mind; had they? A. Not as far as I'm concerned.

Q. Angus, what growth have you observed in the Stone Mountain bank since you have left it? A. I saw a statement, call statement that was printed June 30th or thereafter and the growth was relatively the same as it was about the year or the fall of '71.

Q. And they have a new branch; don't they? A. Yes.

Q. So even with that new branch, their growth has **[243]** levelled off? A. Right.

Q. Do you know of any direct competition that's entered that area by way of branches or new banks? A. It would be several branches.

Q. Would you name them, please? A. And maybe in a five mile radius?

Q. Yes, and give us general—your general notion of how far away each one is. A. National Bank of Georgia would be approximately five miles. The Trust Company and First National would be within four miles; another Fulton and a Trust would be about three miles.

Q. That's the crop? A. Clarkston would be, I would say, four miles, four or five miles.

Q. Clarkston being what? A. Citizens Bank of Clarkston.

Q. Is it affiliated with any other bank? A. It would be affiliated with a group of banks that is referred to as the Robinson group.

Q. This is Mr. Mac Robinson? A. Yes.

Q. Sometimes called a chain banking relationship? A. Yes.

[244] Q. Any others? A. Snellville Bank, about seven miles away.

Q. One moment, please, Your Honor. My colleague is not real sure about what you may have testified at one point and that was on this pre-approval of loans where you and I were talking about, pre-approval of loans by the Board of Directors at Stone Mountain and C&S. I think you were talking about Stone Mountain, were you not? A. Yes, that would be on the limits at the time I went there to Stone Mountain.

Q. Right, that's right. A. Yes.

Q. What has been the rate of growth of Stone Mountain deposits since disaffiliation, as compared to the growth before disaffiliation? A. It would be——

Mr. Frisbie: Your Honor, could we get a time period involved in here in this. Mr. Parker was only at that bank for some time. He testified he has seen some statement for the bank for some time between the time he left and now.

The Court: Pin it down as best you can.

A. When I left the Stone Mountain Bank in October, latter part of October, the size of the bank at that time and compared to the statement that I saw, the **[245]** call statement and the paper in June or first week in July, was within a few thousand in deposit as well as in total assets.

Q. So the rate of growth from October of '71 to June 30, 1972, you are saying is basically none at all? A. Right.

Mr. Hodgson: No further questions.

Redirect Examination

By Mr. Frisbie

Q. Mr. Parker, could you state again the exact time that you started to work for the bank? A. At Stone Mountain?

Q. Stone Mountain. A. February 15, 1966.

Q. And when, again, could you tell us when the name was changed on that bank? A. March 15, 1966.

Q. That was one month later? A. Yes.

Q. And did you have any hand in this process of changing the name? A. No.

Q. Were you aware that this was in the process? A. Yes.

Q. Were you aware of this prior to going to the **[246]** bank? A. I don't recall whether it was before or after because it was something that was, I guess, just happening at that time.

Q. You testified that the C&S Bank of Stone Mountain was not as much a part of the C&S system when you came there as it was at a later date. Is that not correct? A. Right.

Q. Is there any way you can explain why there was this wide disparity there, why it was allowed to use the C&S name? A. You mean before, this is after I went there that the name was changed.

Q. All right. A. It was a matter of putting the system in, going forward from what it was.

Q. Mr. Parker, do you keep the stock books of your bank? A. Yes.

Q. Of the Stone Mountain Bank during that time, did you keep the stock records and everything? A. Yes.

Q. You testified that the stock held by yourself, the two Directors and the five per cent held by C&S **[247]** Holding Company was, to your knowledge, all it, and it referring to C&S or its friends, ever got? A. Yes.

Q. That is right. Do you know who all the employees of C&S National Bank or its affiliates are? A. No.

Q. Are you familiar with all the customers of C&S National Bank or its affiliates? A. No.

Q. Are you familiar with all the officers of C&S National Bank or its affiliates? A. No.

Q. Could some of the names on the stock list have been customers, officers or employees of C&S National Bank or any of its affiliates and you not recognize them? A. Could be.

Q. You testified also that C&S Stone Mountain became a part, those are words you used, became a part of the C&S system in 1959? A. Yes.

Q. How did it become a part in 1959? A. To the extent of a five per cent correspondent associate.

Q. Is that all you meant by that? A. Yes.

[248] Q. Mr. Hodgson brought out the fact that you were criticized by some of the persons at C&S National about your relationship with your Board; is that correct? A. Yes.

Q. Okay. In that respect, did any of the—any officers of the C&S system ever talk to you about your relationship with the Board, specifically referring to your relationship with the Board? A. From the standpoint of not working with the Board or the Board working with me.

Q. That's right. A. In January of '70, 1970, we had an incentive program that was 11%, 5½ was guaranteed and 5½% was incentive based on performance. If you didn't do the job that was expected of you, you would get 50%. If you did the job, you got 100. If you did over and above what was required of you or the usual would be 150. I was given 50% of the incentive for the year 1969 and it was based on not handling the Board like I should the previous year.

Q. Who votes the incentive bonus plan for you as to how much you can get? A. My Board voted on the 11%.

Q. How much did you receive? A. I received 8 point something.

Q. Did you ever inquire as to why you got the **[249]** lesser amount? A. Yes, I asked at the time why, it was because I didn't handle the Board like I should.

Q. Who did you ask? A. Don Ingram.

Q. Don Ingram. What did Mr. Ingram say to you when you inquired? A. I don't know whether it was a little bit of a statement that sounded like frustration to me, when he said, "Well, your problem is, do you know what your problem is?" I said, "I wish I only knew I had a problem because I figure I had more than one problem." Then with that, he says, "Your problem is that you walk too slow, you talk too slow, you move like an old man." He says, "You just don't cut it." With that, I said, "I'm sorry, I'm doing what I have done all these many, many years. I will have to continue to do the way I am doing or else it will be insincere, fictitious and can't live with that." That was the extent of the conversation.

Q. Did Mr. Ingram say anything to you about your relationship with the Board at that time? A. Only to the extent that I had not handled the Board like I should.

[250] Q. Were those the words he used, you did not handle the board like you should? A. Yes, right.

Q. What is the function of the board of directors of any bank? A. It would be for direction of the bank, many aspects of it.

Q. So the board's responsibility is to direct the operation of the bank; is that your testimony?

Mr. Hodgson: If Your Honor please, I object to the testimony as being leading. It is his witness; he is trying to impeach him and I object to it.

Mr. Frisbie: No, I don't believe I am trying to impeach the witness, Your Honor. My question was: was that the correct characterization of what you said? A. Yes.

Q. And, as a consequence, you have also testified that your board did not operate like the other C&S banks; is that correct. A. Yes.

Mr. Hodgson: If Your Honor please, I really do object. He is leading the witness if ever I have heard it. This is his witness, he is on direct examination. I object to the **[251]** form of the question and the answer.

The Court: Sustained.

By Mr. Frisbie

Q. Compared to the other banks in the C&S system, according to the racehorse sheet, could you clarify for us, again, your position in respect to the other banks on that sheet? A. Well, it was a gradual climb to the position that we held at the time that—of the disassociation. Through the five-year period there it would be a matter of continual growth from the standpoint of the ratio.

Q. Can you estimate for us, Mr. Parker, what your earnings were on your bank, your monthly earnings on your bank at the time you went there? A. For the year '65, I noticed in a statement through September, that is, when I was out there, the cumulative earnings at that time was fifteen thousand for the nine months.

Q. And what were they for 1966 year-end? A. They were sixty some-odd, sixty some-odd thousand.

Q. And for 1967? A. I believe they were eighty, eighty some-odd.

Q. And for 1968? A. I believe they were over a hundred that year.

[252] Q. And for '69? A. Maybe a hundred and fifty-five or a hundred and sixty-five. I am a little bit hazy. At the time I left I remember it on a monthly basis more so than an annual.

But, it had increased upward to where it provided a dividend that we could pay from zero to $3.00 a share at one time there.

Q. Mr. Parker, do you ever lose any money on the checking accounts maintained by the customers out at the bank during that period of time, the service of providing a checking account; do you ever lose any money on this? A. Lose in which way now?

Q. As far as the cost of doing business on a checking account, providing the service; is this a profitable or a loss situation, or a marginal or what direction is it? A. It can be a profitable or a loss situation.

Q. Was it ever on a loss situation at your bank? A. I feel like that the loss situation, as compared to the system that C&S was using, would be a loss. For instance, the company-account analysis program, our charges would be subject to loss more than that program.

Q. What I am talking—speaking of, is your **[253]** demand deposit accounts, your checking, persons who have a checking account there. Is this normally a losing situation, a marginal operation, a profitable operation? How would you characterize it? A. We considered it a profitable operation.

Q. Has it ever been a loss or a marginal operation? A. It could be, if you didn't charge for the service according to the cost of operation.

Q. If it got to be a loss situation or a marginal situation, why wouldn't you or would you raise the prices you would charge?

Mr. Hodgson: If Your Honor please, the question is entirely conjecture now. He is not talking about what happened or what he did, and I object to it.

The Court: I think in away, he was, in a hypothetical sort of way. He may answer.

A. Restate your question, please.

By Mr. Frisbie

Q. If your checking accounts, cost of maintaining your checking accounts, this service for your customers, got to be a marginal or a loss situation, why wouldn't you or would you raise the cost of this service to your customers? **[254]** A. Yes, you would if you wanted to provide an earning situation from handling their accounts.

Q. Would you have to consider in that type of situation what the other banks in town were charging? A. Yes.

Q. Would this same—did this same situation hold true as far as your company-account analysis at your bank? A. Would be subject to a loss if the analysis would not be the same as far as the cost provided in this system that they were wanting us to put in. If the cost, per operation cost, that is, if that is not increased according to the work that is being done, there would be a loss. It would have to be remedied from somewhere, from additional charges or from balances of so much.

Q. You also, on cross-examination, gave some testimony concerning the leveling off, I believe you called it, of the Stone Mountain Bank after you left. According to the information you have seen on statements, would you attribute any of this leveling off that bank has done to your leaving the bank, management capability and the difference in management capability between then and now? A. I would like to think that I contributed to **[255]** some of it, since I am operating a short mileage away from the bank, and the business that has shifted from Stone Mountain to Lithonia during that time.

Q. Since this has been brought up, you testified that—I will rephrase that.

Would you think, if you had stayed on at the bank instead of leaving during that—instead of leaving, that you probably would have grown more, your growth would have been greater in that sense? A. Might sound egotistical, but I think if I caused

X number of dollars to leave that bank to come to me at Lithonia, that they would have stayed if I stayed.

Mr. Hodgson: No questions, Your Honor.

Mr. Frisbie: Wait just a second.

The Court: I don't think he's quite through.

Mr. Hodgson: I thought he was. Excuse me.

Mr. Frisbie: No further questions, Your Honor.

The Court: All right. We will recess until 1:45.

(Whereupon a luncheon recess was had.)

[256] AFTERNOON SESSION

Mr. Kinkaid: The plaintiff calls Charles Ginden.

Whereupon,

CHARLES B. GINDEN

was called as a witness by and on behalf of the Government, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kinkaid

Q. Would you please state your full name for the record? A. Charles B. Ginden.

Q. What is your occupation? A. Banker.

Q. And where do you operate as a banker? A. President of the Peachtree Bank and Trust Company, Chamblee, Georgia.

Q. And do you happen to know when Peachtree Bank was chartered or first opened for business? A. 1960.

Q. How long have you been employed at the Peachtree Bank? A. Since October of 1964.

Q. Have you always been President of Peachtree? A. No.

[257] Q. What previous positions have you held there? A. I was Vice President and Branch Manager when I came to the bank in 1964.

Q. Prior to going to work at Peachtree, where were you working? A. I was employed by The Trust Company of Georgia in Atlanta.

Q. What was your position with Trust Company? A. I was Assistant Treasurer and acting Branch Manager of the Chattahoochee office of the Trust Company.

Q. How long had you been with Trust Company? A. About six years.

Q. Did you have any prior banking experience prior to working for Trust Company? A. None.

Q. Do you have any idea as to how many Presidents there were at Peachtree before you became President? A. I believe I was the fourth.

Q. Do you happen to know who the first President of Peachtree was? A. Davis Fitzgerald, I think he was the first President.

Q. Do you happen to know what Mr. Fitzgerald's prior employment was, that is prior to becoming the first President of Peachtree? [258] A. Yes, I think he was with the Trust Company of Georgia.

Q. Would you happen to have any idea of where Mr. Fitzgerald works today? A. He is presently with the Trust Company of Georgia.

Q. Do you know who the second President was? A. Mr. James Williams.

Q. Again, do you have any idea or do you happen to know of your own knowledge what Mr. Williams' employment prior to being President of Peachtree was? A. Yes, he was with Trust Company prior to that time.

Q. And do you know where Mr. Williams is working today? A. My latest knowledge of him is he is Chairman of the Board, First National Bank in Augusta.

Q. Is First National Bank in Augusta, to your knowledge, in any way associated with Trust Company? A. Yes, an affiliated bank of Trust Company.

Q. Who was the President when you first went to Peachtree? A. Claude Booker, Jr.

Q. Do you know his employment prior to being President at Peachtree? **[259]** A. I believe he came to Peachtree from the Liberty Bank in Savannah, Liberty National Bank and Trust Company.

Q. Did that bank, to your knowledge, have any association with Trust Company? A. Yes, it was also a full affiliated bank of the Trust Company.

Q. Do you know where Mr. Booker is working today? A. Yes, he is at, my last knowledge of him, is that he is President of the First National Bank of Augusta.

Q. When you first started to work at Peachtree in 1964, in addition to Mr. Booker, was there any other officers? A. Well, Mr. Warren Jackson, I believe was an officer. Well, I am not sure he was an officer. He was Branch Manager at that time and Mr. W. R. Watkins, I think, was an Assistant Cashier.

Q. Would you know what Mr. Jackson's employment prior to working for Peachtree was? A. Yes, Mr. Jackson had also been with the Trust Company of Georgia.

Q. How long was Mr. Jackson at Peachtree, if you know? A. I don't recall his total time there.

Q. How about Mr. Watkins, do you know his employment **[260]** before working for Peachtree? A. Yes, sir, he was with the Trust Company of Georgia for a short period of time before Peachtree, prior to that, the National Biscuit Company.

Q. Mr. Ginden, who are your correspondent banks today? A. Correspondent relationships with the Trust Company of Georgia, First National Bank of Atlanta, Manufacturers Hanover Trust Company in New York City, National Bank of Detroit, Detroit, Michigan.

[261] Q. Have you, since being president of Peachtree, have you always had all of these four banks as correspondents? A. No, the Trust Company of Georgia was the only bank, the only correspondent bank we had when I became president.

Q. For how long was Trust Company the only correspondent of Peachtree? A. I don't recall the exact dates. Our first account relationship outside that was with Manufacturers-Hanover in New York City, and that relationship is probably right now two and a half or three years old.

Q. What is the nature of the correspondent relationship you have with Manufacturers-Hanover? A. Well, it is principally a —it is basically a semi-active account. We write all of the checks for closed accounts on that particular bank account, and we use the account for any other miscellaneous new business assistance that they—that that bank might be able to give us. But, basically, the account itself is used for the issuance of checks for people who have closed their accounts for one reason or the other.

Q. Could you give us just a bit of an idea as to how Manufacturers-Hanover has assisted your bank in connection with the new business that you mentioned? **[262]** A. Well, at this point, in a negligible way.

Q. Have you had occasion to use Manufacturers-Hanover for any other services besides the ones you have mentioned? A. We have called upon them for participation in credits over

our limit, but to date we have not used any of their services in this area, although they have agreed to participate with us on more than one loan.

Q. What is the nature of the services that you obtain from First National of Atlanta? A. Our account there basically an inactive account.

Q. How long has that account been open? A. About four months.

Q. I think you also mentioned a bank in Detroit, if I recall correctly. A. Yes.

Q. When was that account opened? A. I don't recall exactly; it's been open probably a year and a half.

Q. What basically—what basic services would you get from that bank in Detroit? A. It is also an inactive account, and while we have discussed with them some credit participations and over-the-limit loans, we have asked them for some help **[263]** in contacting new customers moving into our area, that sort of thing.

Q. Do you know whether any bank or banking organization owned any of the stock of Peachtree when you went out there? A. Yes, the Trust Company of Georgia Associates owned five percent of the stock of the bank.

Q. Would you know when that five-percent stock interest was purchased by Trust Company of Georgia Associates? A. Not specifically. I assume it was in—at the beginning stages of the bank.

Q. Do Trust Company of Georgia Associates own any of Peachtree stock today? A. No.

Q. Can you tell us the circumstances surrounding the change in that five-percent stock ownership by Trust Company? A. In 1970, in the early part of 19—well, in 1969, legislative action was taken to change the banking laws from citywide to basically

countywide branch banking, and permitting the Atlanta banks with offices already established in DeKalb County to branch into DeKalb. That was to take effect, I believe, on January 1 of 1970. In the spring or late spring or **[264]** early summer of 1970, we negotiated a merger with the Trust Company of Georgia, for which we were to receive a cash payment for our stock. The merger application was submitted to the regulatory board, which governed the merger, and that was the Federal Reserve Board, and was approved.

Following that, your department, the United States Department of Justice, asked the Federal Reserve Board to reconsider, asked them to stay the merger and to reconsider the merger application for a variety of reasons, and this was done. The exact chronology, I don't remember. The Federal Reserve Board again reconsidered the merger and again approved it, and shortly or immediately thereafter, your department filed suit to enjoin the two banks from merging.

As a part of the merger agreement, either of the two banks, the Peachtree Bank or the Trust Company, could withdraw from the merger if the Justice Department were to bring suit to block the merger. For a number of reasons, we weighed the future events very, very carefully and decided to withdraw from the merger. Following that, we sold the new stock in our bank; this was approximately one year ago in August, and at that time the Trust Company of Georgia stock was also sold.

Q. Now, when you say about a year ago, could **[265]** you get it down—— A. In August, in August of 1971, August or September, we had our stock issue.

Q. Incidentally, can you recall when the Peachtree Bank decided to withdraw from the merger agreement? A. Well, I don't recall specifically. It was at a board meeting in May, June or July, one of those months in there; I'm not sure.

Q. Prior to last August when the five-percent stock held by Trust Company Associates was sold by it, was your bank in

any way identified with the Trust Company of Georgia? A. Well, of course, it had the Trust Company name in its—as the last part of our own name; in that sense I suppose some customers identified us with the Trust Company and some didn't.

Q. What would have led a customer to identify you with Trust Company, what specific thing? A. Well, there was, on some occasions we had appeared as a part of the Trust Company advertising. This was particularly in connection with the issuance of Master Charge cards, which I think was in early 1969.

In addition, we were carried on the Trust Company statement as a five-percent bank, and along with their other five-percent banks in Augusta and Sandy **[266]** Springs. We were also listed in the local Trust Company maps that were distributed to their customers.

Those are some of the ways. Of course, when we solicited business from national customers or people that we thought might know something about the Trust Company, we didn't attempt to hide our affiliation with the Trust Company in any way. As a matter of fact, we promoted it.

Q. Did your bank ever consider, that is, since the time you have been president, ever consider changing its name in any way? **[267]** A. Yes, at one time they agreed to change our name to Trust Company of Georgia, Bank of Chamblee.

Q. Can you recall roughly when you made that decision? A. The matter was discussed sometime in mid-1969 and I think —I believe there was actually a vote taken at a Board meeting sometime in 19—in the fall of 1969.

Q. Can you recall the reason the bank did decide to take this particular action? A. Well, we felt that it would be, at that time, we felt it would be helpful to us in obtaining new business where we could capitalize on the advertising of the Trust Company; that it would more closely identify us with the Trust Company which, in our idea, in our estimation, was not a bad thing.

Q. Do you know whether or not Trust Company was approached for permission to use its name in this way? A. Well, I don't know that the bank was approached. I think we discussed it with the Trust Company lawyers, one of whom was on our Board at the time, and at least, the counsel representing the Trust Company and then they were going to take the matter up, I think, with their trademark lawyers in Washington, and subsequent to that, the banking laws changed and so we never pursued the matter. There—it was just dropped, really, at that time.

[268] Q. Did that have anything to do with the merger plans that you just described a few minutes ago? A. Well, I think that we just—that both parties really felt we had come to some type of merger decision, there wasn't any sense in going through an expensive change of name and all of the legal ramifications that might be involved if we were going to merge. But, I don't know that at that time, we dropped it at that time. I can't recall that the actual discussions of the merger had come up.

Q. Can you recall any discussions with anyone at Trust Company about the change of name? A. Not specifically.

Q. Do you have any recollection at all of talking to anyone at Trust Company about it? A. Well, all I can say is I may have discussed it with Evans Bruner who was Executive Vice President of Associates at that time. Matters of that sort, I would usually talk with him about. So—but I don't specifically recall having conversation with him about it.

Q. Do you have any recollection as to what his reaction was at all? A. Well, not recalling any specific conversation, I don't recall his reaction to it.

Q. You just mentioned, if I recall correctly, **[269]** something about discussing this with your lawyers. Could you explain what you meant by that? Were the lawyers you are referring to your own lawyers or somebody else's lawyers? A. Well, we were—we were represented by the law firm of King & Spalding

and they also presently act and did act then as General Counsel for the Trust Company of Georgia. And one of their lawyers was on our Board at that time basically representing the Trust Company's interest in the bank on our Board.

Q. Prior to the time last—well, let's say last summer when the merger plans were abandoned, can you tell us what sort of services or assistance you were receiving from Trust Company? A. Well, we had, prior to the merger, we were using their computer operations department for all of our demand deposit accounting, installment loan accounting, and savings accounting. Their bond department was also used to analyze our securities portfolio and also to keep track of it, furnish us with a periodic reporting of it. We used their safekeeping services, which involves the holding and safekeeping of negotiable securities for which, which our bank would have in some accounts.

We would refer customers seeking trust services to the Trust Company because we had no trust **[270]** department of our own and customers seeking factoring services to the Trust Company.

The Trust Company, local Trust Company group of banks, when they first went into this Master Charge, it was a group called the Atlanta Plan, and they were servicing our Master Charge accounts for us. When we first went into the Master Charge, we owned our own Master Charge accounts and they were servicing them for us. Really, I suppose we used the whole range of correspondent services. We also were audited once a year, internal audit by Trust Company's auditing department.

Q. Could you explain what you mean by the servicing of Master Charge for you? A. Well, basically at that time, as we owned our own accounts, the Trust Company was handling the collection of those and was doing the administrative work with it necessary to coordinate their processing with the Southeastern Bank Card Association.

Q. Well, are you today offering Master Charge? A. Yes, but offering it as an agent bank wherein the Trust Company owns

the account. The cards are still issued in our name, but payments are routed to the Trust Company for processing and all interest accumulated on accounts accrues to the Trust Company. We derive some benefit by offering the Master Charge services to our **[271]** merchants and we get some—on high discount merchants, we get some portion of the discount rate and as well as the opportunity to have a deposit relationship with some merchants.

Q. What was the difference in the relationship that you were indicating earlier? A. Well, we bore, under the Master Charge arrangement, initially, we bore our prorata share based on activity in the account of the expense in the accounts. Under the current relationship, all expenses of the account is borne by the, the owning bank. Not by the agent bank.

Q. How long were you bearing the accounts yourself? A. Well, we inaugurated the thing in early 1969 and the Trust Company carried the expense most of the time until about June when the program reached sort of high gear, then the expenses from our bank's standpoint became very, very heavy and then in December of 1969, the Trust Company came out and volunteered to buy it back, which they did. And it was sold back to them in January of 1970. We had actually asked the Trust Company to talk to us about setting up our own plan for administering it for not going through the Atlanta plans I described earlier or determining some way to cut expenses in the Atlanta plan.

The third alternative they came forth with, **[272]** and we, without much hesitation, decided to settle back to it.

Q. When you say they bought it back, would that include any of your losses that you had been incurring on it? A. Yes, they reimbursed us for the operating losses that we had experienced in the pla.., less operating expenses we would have incurred as an agent bank for the same period of time.

Q. Of the items that you mentioned before we got involved with the Master Charge, that of processing, bond department, etc. those services that you were receiving from Trust Company before the merger was abandoned, are you still receiving the same services today? A. Well, we are not getting an independent—an internal audit from the Trust Company any longer. Prior to the disassociation with the Trust Company, we periodically had credit surveys made of our loans by the associate office, that is not available to us any longer for competitive reasons, obviously. Basically, most of the rest of the services are, are similar or are the same. There may be some that I have forgotten that are different.

[273] Q. From whom do you obtain your credit audits now? A. We don't have credit audits now, only through——

Q. Did you ever—excuse me. A. Only through examination of the F.D.I.C. and the state banking department.

Q. Does anyone perform any other types of audits for you? A. Yes, we have an independent audit performed by Arthur Anderson & Company.

Q. Just give us a brief description of what an independent audit would be. A. Well, it is an independent directors' audit, which is basically concerned with the internal controls of the bank, the balancing of the cash, the operations procedures, just about everything in the bank, except a review of the credit policy and the loans of the bank. Those are reviewed twice by outside examiners, as I mentioned, and so they do not—they do not perform that service for us.

Q. Before the merger was abandoned, did you receive any sort of advice from Trust Company with respect to your loan policies or lending procedures? A. You mean prior to the negotiation or the——

Q. Well, prior to the time the merger was actually abandoned last summer? **[274]** A. Well, I mentioned earlier the pe-

riodic credit survey which was usually done once every six months, and if there were any judgment of the survey on loan deficiencies, the chief operating officer at that time had—it was requested that he reply toward the corrective action, that type of thing, to the Associates' office. In addition, we furnished copies of all of our credit memoranda to the Associates' office, and would receive some back periodically with comments, one sort or the other, depending upon the type of credit they felt we were extending.

In addition, we did consult with the Associates' office periodically on large credits, when we felt that we needed the advice of some outside expertise.

Q. What was the purpose of sending copies of the credit memos to Trust Company? A. Well, I assume that it was for their observation, and, basically, to keep them informed as to, first of all, if we were or were not writing the memos, and then secondly, whether it would tell us something about the nature of the credit.

Q. Was that something that was being done when you first went to Peachtree or—— A. Yes.

Q. While we are on the subject of credit, did you **[275]** have access to Trust Company credit files before the merger was abandoned? A. Well, in a very limited way. We didn't have, as I recall, we didn't have much common business in terms of lending to their customers. Now, one or two customers we had in common, and they would, with the customer's permission, furnish us with the financial statements that had already been spread, and that type of thing.

The credit department of the Trust Company was available to us for the spreading or outlining of statements, and for credit-analysis work.

Q. Is the credit department still available in that sense? A. In a limited way, yes.

Q. Do you receive any advice from Trust Company with respect to any operational procedures? A. Well, as I mentioned earlier, we were audited by them and upon receipt of the write-up of the audit, it was usually the chief executive officer of the bank, whoever it might be, would, again, reply in writing to the Trust Company about the deficiencies or comment, if comment was necessary, in writing. And we would have conversation periodically with Mr. Bruner or others about ways to improve operating procedures, that type of **[276]** thing.

Q. Now, did you receive any assistance from the Trust Company with respect to any personnel problems that might have arisen? A. Well, could you give me an example of the personnel problem that they might——

Q. Right. For example, while you were the president of Peachtree and before the merger was abandoned, did you have occasion or need to hire additional employees? A. Yes. And we did request that the Trust Company assist us in this area, and we were permitted to talk with several of their people to ask them to come to work at Peachtree.

Q. Did a similar situation ever arise with respect to officers of the bank? A. Well, most of the people who came with the Trust—came from the Trust Company to us, would not come as officers. They were not officers at the Trust Company; at least this is during my relationship with the bank as president. And in this particular area we are discussing, most of them came maybe as administrative assistants, and then were later promoted to officers.

Q. Did you ever have occasion to seek advice **[277]** from the Trust Company on salaries to be paid any employees? A. Yes, we did discuss salaries with—or I discussed them with Mr. Bruner on occasions, and found him quite—found him very helpful in providing comparative information about salaries of the other affiliated banks, and this type of thing.

Q. Was there any particular reason for seeking such advice from Mr. Bruner? A. Well, Mr. Bruner was executive vice-president of the Associates, and also a close personal friend, at least, I felt he was a close personal friend and always had an interest in the bank, and so he was the one we would go to for this kind of information, basically, and he would be the one in the Associates' organization that could furnish it.

Q. I think you used, if I heard you right, I think you used the word "compared" or "comparative" with respect to salaries; am I correct in that? A. Right.

Q. If I understood your answer correctly. I would like to ask you why were you seeking information from Trust Company as to comparative salaries among Trust Company and Trust Company affiliated banks? A. Well, it is for the same reason that most any **[278]** business seeks in its area comparable or comparative salaries for clerical personnel, is to make an evaluation of the salary program, our benefits, and that type of thing. Are we in the market with our officers or are we out of it? That sort of thing, and the first place for us to go for that information, where it would be most readily available, would be Trust Company Associates.

Q. Did you receive any sort of assistance in what we might call advertising and public relations area? A. Trust Company was helpful to us in our public-relations program. They assisted us with people when we had our—the opening of our Industrial Boulevard office, and they assisted us again with personnel when we had an open house after construction of the addition to our main office.

Q. Do you receive such assistance today? A. No.

Q. Was there ever a time while you have been president of Peachtree, now this would be before—again, before the merger was abandoned, when you had a need to raise additional money or you needed more money than you had, and

you had to do something to get some more money? A. Well, we raised capital in 1964, I think, we **[279]** sold additional stock shortly after I came there. Of course, one of the reasons—one of the indirect reasons we abandoned the merger was because of our inability to disturb the merger agreement and raise additional capital.

Q. Let's see now. Will you please go back, it was '64, I think you indicated? A. Right.

Q. Now, that was a stock issue in '64? A. Yes, that's right.

Q. Were there any additions at any times after '64 that you had to issue any kind of, I believe, either new stock or any kind of debt instruments in order to raise additional money? A. I don't believe so.

Q. Are you familiar with the—— A. Now, you are referring between that time——

Q. ——with the term "investment note"? A. Right. You are referring to that time between 1964 and the un-merger?

Q. Yes. A. Yes. You are also referring basically to the capital instruments, like additional stock or capital notes?

Q. No, I asked either a capital note or a debt **[280]** note. Of course, if that is a proper term, I don't know. A. Well, we did offer at the same time the Trust Company offered 7½% investment notes, which are basically simply borrowed funds. This instrument came into being somewhere in the early part of 1969, and we sold—these were 30-month investment notes, and we sold $1,000,000 worth.

Q. Was that the amount that you were trying to raise, $1,000,000? A. Well, we just started and quit when we thought we had enough, so——

Q. Now, did you receive any assistance from Trust Company in connection with the sale of these 7½% notes? A.

Yes, we did. We sold to our own customers, basically, about $350,000 in investment notes. And then, basically, our sales efforts really tapered off. Our effort was there, but we didn't sell any, and the Trust Company sold in the vicinity of $12,000,000 worth of these notes. And after their sale was curtailed, they referred their customers directly to us, and we sold their customers the remainder of the $1,000,000.

[281] Q. So far as you are aware, have the salaries of Peachtree officers always been paid by Peachtree directly? A. When I first went to the bank, I believe Mr. Jackson's salary was reimbursed to Peachtree from the Associate office. And I think the same was—the same procedure had been in effect for Mr. Williams' salary. Now as to the rest, would be an assumption before that time.

Q. I'm not sure I understand what you meant when you said reimbursed. A. Well, the Peachtree would pay their salaries, but then be reimbursed from the Trust Company or the Associate's office. After Mr. Jackson left, that was no longer the case. So, I am not intimately familiar with the procedure.

Q. Are you aware of whether or not a demand deposit was ever maintained at Peachtree by Trust Company? A. Yes, I think there was a deposit there by the Associates, by the Trust Company's associates, but it was withdrawn over a period of a year and several months after, shortly after I came or during the time I came, sometime in that period of time.

Q. Can you recall today in what amount the deposit was? A. I don't remember exactly.

Q. At the time last August, I believe you indicated, **[282]** when you sold additional stock and Trust Company Associates sold back its five per cent, to your knowledge, did any, was any stock sold back to the bank by any individuals connected with Trust Company, either as officers, employees or Directors, or anything of that sort? A. Yes, several of the em-

ployee officer groups sold their stock at that time, but some still retained their stock.

Q. Would you have any idea at all who, as to the number of shares that were sold back by people like that? A. I really wouldn't.

Q. Incidentally, do you happen to know offhand how many stockholders you had prior to that recent, or prior to the sale of stock in August of last year, how many stockholders you had just prior to that and how many you have today? A. Yes, we had about 200, 210 roughly. Today, we have roughly 466.

Q. Does Peachtree have any group health and accident insurance policies? A. Yes, we do.

Q. By whom are they administered? A. We administer them ourselves.

Q. And where are they, where are the policies placed if that is the proper term? **[283]** A. The insurance carrier?

Q. Yes. A. The Provident Life & Accident Company of Chattanooga.

Q. How long has this firm in Chattanooga been the carrier for the policies? A. About four months, five months.

Q. Who was the carrier before then? A. New York Life and Prudential Life Insurance Companies.

Q. And have they been the carriers since you have been President of Peachtree? A. Yes, there was a change of one for hospitalization and one for life, but basically, the insurance was carried through the group carriers of the Trust Company Associates' office and our insurance was handled by the same, same companies that handled the affiliated banks.

Q. Are you indicating that those were some sort of group policies? A. Yes, yes, always.

Q. Who belonged to the group? A. All of the affiliated banks.

Q. What other sorts of insurance does your bank carry that—this would be insurance not on its employees, but on its banking operations or banking premises? **[284]** A. We carry, of course, a whole range of extended coverage and liability insurance on our building, and on our bank property, and we also carry banker's blanket bond insurance which carries the rest of the internal protections of the bank.

Q. Have you ever had any arrangements with respect to those types of insurance similar to what you had with your group health and accident policies? A. Well, at one time our bank was carried under the Trust Company's plan, almost as a branch, and then in 1969, because of some regulatory ruling, we had to purchase our own banker's blanket bond. This had nothing to do with the merger or un-merger. It was just a new regulatory ruling of some sort and the premiums were considerably higher, of course, by that time as opposed to what they were as sort of a branch operation.

Q. Does Peachtree have a profit sharing plan? A. Yes.

Q. Who administers your plan? A. It is administered by the Trust Company of Georgia, Trust Department, under our direction.

Q. Has it always been administered by Trust Company since it was first instituted? A. Yes.

Q. Prior to the merger plans being abandoned, did **[285]** you or any of your officers attend any instructional classes, meetings, seminars, etc. held by Trust Company? A. Well, in the fall of every year for, I guess four years or so, I was invited to attend the Trust Company affiliate meetings at Sea Island, Georgia, which was a Directors meeting at that time. And usually, I went by myself and the last couple of years, I took either a Director or associate with me. The Trust Company, for a couple or three years, had an evaluation session, sort of let's look where

we are going session at Callaway Gardens for a weekend in the spring. I went, and I believe I took an associate with me, I believe I took an associate with me two years, if it were held three years, I don't recall.

Q. Did you ever have occasion to seek assistance from Trust Company in terms of training any of your employees for a particular job? A. Yes, we had one of our employees farmed out in the affiliate organization doing the same credit survey in other banks I had reference to earlier that was done in our bank periodically. We also had this particular employee spend more time in Trust Company's credit department learning something about spreading statements and that type thing, basic credit department policy. We had an employee in the collection department for a while being trained in collections and I also attended the Master Charge **[286]** meetings as part of being the Atlanta plan and we had a lot of those back during the early days of Master Charge.

Q. Have you ever purchased any of your bank supplies from or through Trust Company? A. We have had a very modest amount of supplies, standard cards, that type of thing, from the supply department of Trust Company

Q. Have you made any of these purchases since last summer? A. No, we have not.

Q. Were the salaries of the officers of Peachtree ever reviewed in any way by Trust Company to your recollection? A. Well, only insofar as discussion might have been held with Bruner about those particular salaries as they compared with salaries in the affiliate system, that type thing.

Q. Since you have been President of Peachtree, have any vacancies in your Board of Directors occurred? A. Yes, we had one of our charter Board members died, I guess maybe a year after I became President, 1968, maybe '69.

Q. Did you seek any advice or assistance from Trust Company in connection with replacing that Director? A. Well, we—yes, I did. I talked with **[287]** Mr. Bruner about possible candidates which we had in mind.

Q. And what were you hoping Mr. Bruner would do in that regard? A. Well, it was generally my policy to discuss any major change in the Board of Directors or any additional Directors with all of the significant stockholders of the bank; and I felt that somebody that owned five per cent of the bank ought to have a comment about it regardless and in the case of the particular replacement that we added to the Board, the Trust Company was in total agreement.

Q. Would you know how many of your Directors, now this would be after you became President at Peachtree, how many of the Directors on your Board at that time had any association with Trust Company, particularly in terms of being customers of Trust Company? A. Let's see, five or six.

Q. At that time, how about—what was the size of the Board? A. I believe we had nine Board members, I'm not sure. I think there were nine Board members.

Q. You were a Director, weren't you? A. Yes, that's right.

Q. Did you indicate earlier that a lawyer from King & Spalding was on the Board of Directors? A. Yes.

[288] Q. Was he on the Board when you became President? A. Yes.

Q. Now, after the merger plans with the Trust Company were abandoned, did any of your officers or employees leave Peachtree? A. No, not after that time.

Q. Have you hired any additional officers or employees since last summer? A. Yes, we have hired—basically, we have hired —we have hired a number of employees and we have hired one other officer.

Q. How have you gone about, first of all, acquiring the additional employees? A. Well, by word of mouth or by advertising locally. In some cases, we have asked the Trust Company to refer people to us that might be in a clerical position that were leaving the Trust Company and lived in our direction and wanted to work out closer to us. We have also interviewed a number of the other prospective employees of the Trust Company. They sent several people out and we hired a couple of them.

[289] Q. Did I understand you correctly to say you have hired one officer? A. That's correct.

Q. Since last September. How did you find him? A. Well, he came to us; he came to us from the Trust Company. And knowing something of our bank and our plans, asked if there might be an opportunity for him. And we subsequently talked with the Trust Company people and then with him.

Q. Prior to the merger plans being abandoned last summer, how would you have characterized your relationship with Trust Company? A. Well, I think we were considered as a part of the family, so to speak, a very close relationship.

Q. Do you, by any chance, offer what we have heard referred to as a lock-box program? A. Yes, we do.

Q. How do you offer that? Do you offer that through the use of any correspondent? A. No, we have several lock-box accounts and we offer it by going directly to the customer and calling on them and offering it. It is a very simple sort of system that we use, but the checks are mailed to the post-office box, and we go pick up the checks and deposit them and make some record of the deposit, and send that along to the customer.

[290] Q. Do you use the services of another bank in any way in performing that service? A. No.

Q. Do you do any accounts receivable financing at Peachtree? A. A modest amount.

Q. There again, do you use the services of or assistance of another bank in performing that type of financing? A. No, that doesn't lend itself to an outside correspondent or another bank being involved.

Q. Last summer, before the merger was dropped, how many offices did Peachtree operate? A. We had two offices.

Q. How many are you operating today? A. Four.

Q. When were these additional offices opened? A. One was opened in, I believe it was in April; it was our Embry Hills office—I'm sorry, it was before that time. It was in a temporary facility, in a trailer, in February, I believe. And the other office was opened in June or July at another location, also in a temporary facility, in a trailer.

Q. Were the applications seeking regulatory approval of those two branches, were those applications **[291]** filed before or after the merger plans were dropped? A. After the merger plans were—after the un-merger.

Q. I think you may have already, in effect, indicated the answer to this question when you were telling us about the sale of stock last August. Was there any connection between that sale of stock and these two additional offices that you have opened? A. Well, we felt we knew that we had to raise additional capital in order to expand the bank, and so after examining several courses of action, we determined that the best thing to do was to raise additional equity capital, and that was the reason for the sale of the stock.

Q. Do you have any further applications pending for branch approval? A. Yes, we have one pending now.

Q. Since the un-merger, have you raised money in any other way besides the stock issue last August? A. Yes, we sold a $1,000,000 capital note; that was completed in June of this year.

Q. Could you give us a sort of running account of the deposits, the loans and assets of Peachtree over the past two years? A. Well, I can tell you basically where we are **[292]** now and where we were a year ago, roughly. Our total assets are presently, or as of June 30th of this year, are about $31,000,000 maybe thirty-one and a half million as opposed to twenty-one and a half million one year ago. Deposits account for about eight million of that increase. The remainder in capital and retention of earnings. The new $1,000,000 note I just mentioned, the other new capital. Loans are up also, correspondingly, increased correspondingly.

Q. I would like to find out what the deposits, loans and assets were from mid-year '70; can you tell us that of your own memory or would you need some assistance? A. I would have to go back and look at a statement, I think, to give you the specifics of it. It seems to me that about year-end last year—well, that wouldn't be applicable; that is not what you asked for. I would have to refer to this statement to give you a specific.

Q. I have here—these are the statements you are referring to, the consolidated report of condition? A. The year-end and mid-year statements of condition, right.

Q. Yeah, I have these from mid-year '70 through **[293]** mid-year of '72. A. Okay. Mid-year of 1970, total assets were $17,556,000, and the total deposits at that time were fourteen million eight, total loans were approximately $10,349,000. 12-31-1970, total assets were $19,683,000; total deposits $16,-464,000; total loans $10,443,000.

Mid-year '71, just referred to, total assets $21,283,000; total deposits $17,772,000; loans $12,600,000.

Year-end '71, total assets $24,615,000; total deposits $20,-251,000; total loans $15,200,000—220,000.

In mid-year this year, total assets $31,484,000; total deposits $25,695,000; total loans $19,504,000.

Q. Could you give us an idea of how your earnings as of mid-year '72 compared with earnings for mid-year of '71? A. They are up about twenty, about 22% over 1971.

Q. Now, do you presently have any plans for additional branch offices? A. Well, we have no specific sites outside the application which we have pending, which you referred to earlier. We do have plans for additional branch **[294]** offices in DeKalb County.

Q. Do you presently have enough capitalization to cover the pending branch application, assuming that it receives regulatory approval? A. Well, I hope we do. I think we do, yes. I don't know what the regulatory people think.

Q. Could you categorize for us the types of customers that your bank primarily serves? A. Well, I guess I would divide the—I would divide them generally into commercial, retail and individual customers. The commercial would be customers engaged, maybe, in manufacturing and distributing, that type of thing. Retail would be just as the name implies, local merchants of one sort or the other, discount stores and that sort of customer. And individuals, as the name im—the name is self-explanatory.

Q. Are you able to serve these three classes of customers adequately, from your own standpoint? A. Well, we would like to offer them some more services in terms of offering them some trust services, for example, directly. But, we don't have any intention of doing that right away. We are not able to extend large lines of credit to significant commercial customers who might be seeking—so our ability to attract that **[295]** type of deposit is limited.

Q. Other than the large-line-of-credit problem, are you able to—that is, your own bank, are you able to serve the needs of large commercial customers? A. Well, we have been up to this point. We have been able to obtain for them services that we didn't have generally, either through a correspondent or we

have just had to innovate, like this lock-box thing, and start servicing it ourselves.

Mr. Kinkaid: Excuse me one moment, Your Honor.

Would this be an appropriate time for a little break, sir?

The Court: All right. We will take a ten-minute recess.

[296] Mr. Kinkaid: We have no further questions.

The Court: Mr. Doyle?

Cross-Examination

By Mr. Doyle

Q. Mr. Ginden, when you first went to Peachtree Bank and Trust Company, you received your profit sharing plan from the Trust Company of Georgia; did you not? A. That's correct.

Q. At that time, Peachtree Bank did not have a profit sharing plan? A. That's correct.

Q. Subsequently one was put in? A. Yes.

Q. When it was put in, it was not an integrated plan with the Trust Company's plan; was it? A. No, it was a separate plan.

Q. Does the same hold true for profit sharing?

First, had you qualified for the profit sharing plan while you were at—we were just talking about profit sharing. I'm sorry, I'm going to talk about pensions.

You hadn't qualified for a pension when you were at Trust Company? A. No.

Q. You did subsequently qualify for a pension at Peachtree? **[297]** A. No, we have no plan.

Q. Does the Trust Company have a pension plan? A. Yes.

Q. While you were President and before that Branch Manager at Peachtree Bank, did you regularly attend staff and officers meetings that were held on a monthly or weekly basis with Trust Company? A. No, other than the meetings I have described earlier.

Q. Yes, sir. When you were President of Peachtree Bank and Trust Company, did the senior officers of the Trust Company Bank or Trust Company associates regularly and continuously sit as advisory directors with your Board of Directors? A. You mean at the Board meetings?

Q. Yes, sir. A. No, they did not. They were invited to do so.

Q. And as a matter of fact, their attendance was more on a sporadic perhaps once or twice a year kind of basis? A. That's correct.

Q. Did you in the normal course of regularly—on a weekly or monthly basis, monthly I suppose, receive from Trust Company performance charts and tables showing operating ratios, earnings on assets, that sort of thing? **[298]** A. We received periodic information from the affiliate banks, and my memory as to exactly what we got is really hazy.

Q. Do you remember receiving those performance charts and tables on your bank? A. You mean, how we stacked up generally?

Q. Yes, showing how your performing ratio was and the rest. A. Yes, periodically we get those things from the affiliate offices after a comparison is made with our bank, banks in DeKalb and the banks in the North DeKalb area.

[299] Q. Right. Then, did you make periodic budget projections of earnings, and where you wanted loans to be in the next quarter or next year? A. We did that on an annual basis and furnished them to Trust Company affiliates. Well, that was very informal. We usually furnished them—we usually discussed it

with the board, and if they requested a budget from us, we would send it to them.

Q. But, this was not a regularized procedure? A. I don't recall sending any of our budgets to the affiliate banks, to the Associates' office.

Q. Right. And with regard to your budgets and projections then, it follows that you didn't receive any sort of goalposts or reviews that you heard discussed this morning? A. No.

Q. Or anything of that nature. You mentioned that you discussed with Trust Company officers salary scales to see if you were in line, that sort of thing? A. Right.

Q. Did the Trust Company affiliates or associates make recommendations to your board or your officers as it tied into performance? A. Not while I was president.

Q. Was there—were the salaries of the Trust Company officers and employees, **[300]** including your own, coordinated with the Trust Company system salaries? A. I don't—what? I don't understand what you mean coordinated.

Q. Well, you have told me that you had a separate profit-sharing plan. What I am wondering is, was an officer or employee portable with his package of benefits within the system? Was a conscious effort made to keep him coordinated within the system, so far as the benefits and salaries at your bank were concerned? A. Well, I think I testified earlier that we only took one officer from the Trust Company and the others that came were employees and——

Q. Right. A. Insurance would be transferrable, that type of benefit.

Q. Right. A. You have already alluded to profit-sharing.

Q. Right, that was—— A. Which was not transferrable.

Q. Right. All right, sir. Did you receive at Peachtree Bank something in the nature of this general operating guide? Did you see that this morning? A. I didn't——

[301] Q. A general operating guide or anything of this nature from the Trust Company, which would have been distributed to Trust Company branches, which would also have been distributed to you for guidance in running your bank. A. No, we received an installment-loan operating guide, but nothing of that magnitude.

Q. All right, sir. Now, you earlier mentioned, I think, on direct examination, that you used your Detroit correspondent, I think, to help you with new business coming into your area? A. That's correct.

Q. You earlier discussed the bank in North DeKalb. Is it fair to characterize your fairly competitive area as being the North DeKalb area? A. At the present time that is true.

Q. Your name, identification, localizes you in an area going out Peachtree Road and in the northeast quadrant, I suppose, of the metropolitan area? A. That is basically where our business is, that is true.

Q. Do you presently consider yourself to be an effective competitor in that part of DeKalb County south of Decatur, South DeKalb area? A. No.

[302] Q. You discussed your capital, your capital in connection with your expansion. Do you presently anticipate or do you foresee any difficulties with regard to a continuation of expansion by branching on your present capital? A. Well, a great deal depends upon the adequacy of our earnings, whether we continue to leave them in the bank or not, and the attitude of the regulatory people. We would hope that we would not have to raise any additional capital for a reasonable period of time, another two or three years. That is, any additional equity capital.

Q. As a result of the change in the branch banking law, has the location of new branches from banks in Atlanta out in DeKalb County posed any difficulty or do you see that it poses any difficulty with regard to free expansion of branches by your bank? A. Well, there aren't as many spots to go as there used to be, and, basically, the total market has been diluted by the addition of other offices in the county. We still plan to expand.

Q. After your bank and the Trust Company were sued by the Anti-Trust Division with regard to the merger, you told us on direct examination that for a number of reasons you decided to withdraw from the merger agreement. **[303]** Was one of those reasons related to your capital situation? A. Yes, it was.

Q. You had a cash transaction with the Trust Company; is that not correct? A. That's correct.

Q. And during the period that it would take to litigate, your stockholders would have received only an interest payment on their equity? A. That's correct, providing the litigation was successful. They would not receive anything if the litigation were not successful.

Q. Did that play a substantial or major part in the determination of your bank not to fight, not to litigate? A. That was a significant part of the decision.

Q. All right, sir. With regard to your stockholders, you told us that you discussed major changes with all of your major stockholders. A. Yes.

Q. Generally. Would you identify the stockholder or stockholder group which has the largest percentage of shares in your bank? A. Mostly the board of directors.

Q. And does one family, the Embry family, control **[304]** a significant block of stock in your bank? A. Yes, approximately 20%.

Q. And is that the largest block? A. Yes.

Q. Do you have any other families or individuals who own a share of stock in excess of, say, 5%? A. I don't believe so.

Q. Do you own in excess of 5% A. No.

Q. Did you then? A. No.

Q. You told us that your board considered changing the name, and I believe it was your testimony that they voted to change the name? A. Right.

Q. To the Trust Company, Trust Company of Georgia Bank of Chamblee? A. That's correct.

Q. Now, before the name was changed, was it your view that all of your customers identified your bank with the Trust Company? A. No, I think I said some did and some didn't really.

Q. And part of the reason or consideration of the name change was for those who didn't give them that **[305]** identification; is that correct? A. That's correct, particularly the new customers.

Q. Was any part of the consideration whether or not to change the name in response to the name change at C&S Chamblee? A. I don't recall when the name change took place at C&S, Chamblee, and I can't say how much it influenced our thinking.

Q. All right, sir. You have told us that presently you do not receive any credit surveys from Trust Company. A. That's correct.

Q. Although you did receive them before. A. Yes.

Q. And you stated for competitive reasons. A. Well, we have not requested them, don't know whether they would be provided if we requested them. We don't really want them for competitive reasons.

Q. All right, sir. You had them before? A. Yes.

Q. And that is why you were part of the family? A. That's correct.

Q. Now, before that time, was your bank competing against the Trust Company? **[306]** A. Well, we felt more as if we were an arm of the Trust Company in that area, and I suppose we were competing against them but not on a—on a head-to-head basis. Our——

[307] Q. You didn't have any formal agreements with the Trust Company that you were not going to compete against them, did you? A. No, we did not.

Q. You compete now against C&S Banks, don't you? A Among others, yes.

Q. You have a branch of the C&S Chamblee Bank across the street from you, down the street from you? A. In both our locations and in the Chamblee location, that's correct, right.

Q. And you compete against that C&S Chamblee branch as if you were competing against C&S? A. Right.

Q. You wouldn't compete against it any different if it were a branch of C&S Emory, would you? A. That's really a difficult question to answer, but I don't know what it would be like if it were a branch of C&S Emory. If C&S Emory and C&S systems are the same, then the answer is true. If there is some difference in C&S Emory, then the answer is not true.

Q. And did you tell us on direct examination that because of the need for capital and expansion from the time of its organization until the present, your bank has not paid a cash dividend? A. I did not say that in direct examination, but **[308]** that is true.

Mr. Doyle: If it please the Court, may I have just a couple of minutes.

Q. Mr. Ginden, going back to the question of your ownership of your bank's stock, and consulting with major stock-

holders, who beyond Mr. Embry would be constituted a major stockholder in your bank? A. Well, most of the Board members with two exceptions own from three to five per cent of the stock.

Q. Of the major stockholders in your bank, are any Trust Company officers, Directors or employees included within that? A. Yes, one is a Trust Company officer now.

Q. And who is that now? A. Mr. Fitzgerald.

Q. And are there any others, major stockholders who you consider significant that you consult with before a major change? A. No, there are no other Trust Company employees, there are other major stockholders.

Q. No other major stockholders who are Trust Company employees? A. That is correct.

Q. And you've told us that you have less than five per cent stock ownership in your bank? **[309]** A. Myself, personally?

Q. Yes. A. That's correct.

Q. What per cent do you have, Mr. Ginden? A. About one per cent.

Q. Has the Trust Company of Georgia placed any of its branches in your primary trade area? A. Not yet.

Mr. Doyle: Those are all the questions I have of Mr. Ginden.

Mr. Kinkaid: May I have just one moment, Your Honor?

Redirect Examination

By Mr. Kinkaid

Q. Mr. Ginden, you were asked a while ago about those rather large volumes over there, various manuals that circulated around C&S and I believe you indicated that, if I understood you correctly, that you had never gotten anything quite that

voluminous from Trust Company. Did I understand you correctly in that? A. That is what I was saying, yes.

Q. Did you as a matter of fact receive, from time to time correspondence of any kind, bulletins, memoranda, letters from Trust Company about any kind of banking procedures or banking operations? **[310]** A. Well, we periodically receive information about new services they were offering. We used to get their little internal newspaper that they had all the time. I referred to, I think, the installment loan manual that we had. We, of course, receive all their quarterly earnings information, as well as an occasional packet of their full services, including maybe a new account sheet that had been developed or maybe something like that.

Q. You were, I think, a Branch Manager at one time for Trust Company? A. Yes, I was acting Branch Manager. I was not a Branch Manager.

Q. Does Trust Company distribute manuals of that kind, operating manuals around among its branches? A. Well, I can't answer your question very well because I recall having some type of basic manual. But it's been so many years ago, I don't really remember what was in it. But it seems to me when I went from one branch to the other, I carried something with me that had some operating information in it, but I don't——

Q. Did you by chance carry the manual with you when you went to Peachtree? A. I think I took it with me, but I didn't refer to it.

Q. If you had needed information on operating, **[311]** any information out of the operating bulletins that Trust Company had distributed among its branches, would you have been able to obtain that information from Trust Company? A. Yes, I think so.

Q. The gentleman that was referred to, Mr. Embry I believe it was, what is his business? A. He is in the mortgage business, real estate mortgage and development business.

Q. Was he one of the, or is he one of the Directors that you indicated earlier was, to your knowledge, a Trust Company customer? A. Yes, he is.

Q. The question that you were asked about, whether you compete with, when you compete with C&S Chamblee, are you competing with the C&S Banks. Would your answer have been any different a few years ago, before Chamblee National Bank changed its name to C&S Bank of Chamblee? A. Well, of course, at that time, we were the only two banks in the area. I think the answer would have been that we were competing with C&S Bank or Chamblee National Bank, which we have always considered our major competition out there.

Mr. Kinkaid: No further questions, Your Honor.

The Court: You may step down.

[312] Mr. Stern: We wish to call Warren Jackson.

Whereupon,

WARREN JACKSON

was called as a witness by and on behalf of the Government, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Stern

Q. Would you state your name, please. A. Warren T. Jackson, Jr.

Q. Where are you employed, Mr. Jackson? A. First National Bank of Tucker.

Q. What is your title there? A. President.

Q. How long have you held that position? A. Just about three months.

Q. Could you give us a precise date? A. July 10th was my date of—first date on the job.

Q. And you, again, as President? A. I was elected on July 12th.

Q. By whom? A. By the Board of Directors.

Q. Of? A. First National Bank of Tucker.

Q. Where were you employed previously? **[313]** A. Trust Company of Georgia.

Q. And what was your title there? A. I was Vice President and Branch Manager.

Q. Where? A. Northside Parkway.

Q. And could you tell us briefly where that is? A. That's at West Paces Ferry Road and Expressway, Northside Parkway.

Q. How long did you hold that position? A. Four years.

Q. Could you start at the beginning of your involvement with banking, when you first entered the banking field and just chronologically take us up to the present? A. I graduated from Emory in 1957, June of '57. I began credit training programs in June, was on the credit training program for about two years, was promoted and moved into the commercial accounts section, main office. Stayed there about six months and then became an employee of the Peachtree Bank and Trust Company where I was Branch Manager for about eighteen months.

I came back to the Trust Company and became Assistant Manager of the Buckhead office of the Trust Company and was there for about three years and then became Manager of the Northside Parkway office in June of '68.

[314] Q. Could you briefly describe the events which led up to your becoming president of First National Bank of Tucker?

A. I was contacted by Larry Morris, and he had acquired the bank in April of this year, and he was seeking someone to lead his bank. He made an offer to me in early June. I did some investigation and sought, having completed fifteen years with the Trust Company, to determine if it was proper to make such a move. I did determine it would be an extremely advantageous move, and I did resign from the Trust Company or tender my resignation on June 24th and left on the 7th of July.

Q. Now, you said you had completed fifteen years with the Trust Company. You did say that you had been working in Peachtree? A. Right.

Q. Do you include that with your employment with the Trust Company? A. Right.

Q. When you say you determined that it would be advantageous for you to leave a long career where you had advanced to quite a good position with Trust Company to go with First National Bank of Tucker, what did you mean by advantageous? A. Well, financially it was an extremely interesting **[315]** situation. It was an opportunity to broaden my experience in banking, and, thirdly, I wanted the opportunity to run the show. I wanted to be the red tape rather than be a victim of it.

Q. Now, when you say to be the red tape, allowing for the humor inherent in that, what else does your present position mean to you as a part from what would have been your career with a large bank? A. Well, I am definitely part of the decision-making force in the First National Bank of Tucker. And, I was very far removed from that area at the Trust Company by virtue of the size.

Q. When you say you are a part of the decision-making force at the Tucker bank, how do you mean that force? What else is a part of that force besides yourself? A. Obviously the board of directors to whom I am obligated to perform the work.

Q. That is the board of directors of the First—— A. Right.

Q. ——of the First National Bank of Tucker. A. Right.

Q. Are there any other elements in the decision-making process? A. No.

[316] Q. Just yourself and the board? A. Right.

Q. You also stated that you made an investigation into Tucker before deciding whether to take the job there. Could you describe, briefly, what that investigation involved? A. Well, Trust Company represents people of high integrity, the management, ownership and the leaders, and I wanted to be certain that I was not going into any less circumstances. Secondly, I wanted to be sure that the ownership did not plan to play games with the bank, that there was, in fact, an opportunity there to grow. And I was assured of that, and I contacted numerous people who had met the primary stockholder, Mr. Larry Morris, and knew him personally. And I obtained enough confidence that he was a man of his word, and I did have a contract to clarify a number of items that would help me make the decision.

Q. And have your experiences since that time borne out your impressions? A. Right.

Q. At the time you became president of the First National Bank of Tucker, was there any existing relationship between that bank and the First National Bank of Atlanta? [317] A. There was a relationship.

Q. How would you describe that relationship? A. Perhaps best as a branch, a quasi-branch.

Q. Could you elaborate on that? A. Well, there were a number of functions that were performed by the First National Bank for this independent bank, and the transition would be made at such time as the First National Bank of Tucker acquired the management.

Q. Now, has that transition been made? A. Yes, it has.

Q. Have you then acquired all the necessary management? A. Yes, right.

Q. Now, you said that there were certain functions being performed, and that this was why you regarded it as a branch. A. Right.

Q. Could you tell us what those functions were? A. Very broadly, the bookkeeping operations were transferred to the First National of Tucker. Secondly, the bank fund management had been handled by the bank. Thirdly, the bank accounting had been handled by the First National. We acquired that. And then, lastly, some very minute areas in the loan operations.

[318] Q. Are there specific functions within these general areas that are involved? A. Yes, there are.

Q. Could you tell us what they are? A. To give you some sequence, I did bring a list here.

Q. Do you have copies of that? A. Yes, I do.

Q. May I have the copies?

Mr. Stern: Would Your Honor wish to see this, or he is going to just talk about them.

A. This is basically the sequence in which these things came back. First, the bookkeeping operation was brought to the premises. This includes the proof transit operation, cancelling of checks, filing of cancelled checks, the mailing of statements and cancelled checks, and then all the miscellaneous things, such as insufficient funds checks, stop-payments and overdrafts are handled. In the general bank accounting, we assume the loan-ledger posting, the property-ledger posting, income and expense accounting, all regulatory reports and bill-paying. In the management of bank funds, we now determine our liquidity need, and we invest the surplus fund and finally, in the

loan area, [319] we prepare our own commercial-loan ticklers. It was necessary to establish loan policy, and we have now assumed the installment-loan collection procedure, and we also seek to recover any lost loans. We probably have left out some minor things, but these are the larger items that have come back, and basically in this sequence.

Q. Do you handle your own payroll system? A. Yes, well, we have a correspondent service with First National Bank. They prepare the forms and send us the checks.

Q. They even make out your own checks? A. Right.

Q. These are the checks that pay your employees? A. Right.

Q. Are there any functions in connection with the payroll system that you do handle now? A. The posting throughout the proper accounts in the bank.

Q. Okay. Could you briefly go down this list once more, and explain, first of all, what is proof transit. A. This is simply the processing of checks for clearance on other banks, and it is handled through the First National Bank.

[320] Q. These are checks that are brought to your bank but are drawn on other banks? A. Right.

Q. Now, what mechanically do you do in proof transit operations? A. We actually proof totals and submit them in a cash letter.

Q. Does this involve the stamping of the magnetic numbers on those checks, or is that done by First National of Atlanta? A. It is necessary to encode some. We have a great number of our checks are encoded previously so——

Q. Who codes those, your bank? A. Well, in any exceptions we would.

Q. What does bill-paying mean? A. Simply the paying of the obligations of the bank.

Q. Its own internal problems? A. Right, right.

Q. On management of bank funds, what does this involve? A. Well, previously the First National had looked at the surplus funds of the bank and decided when investments would be appropriate, and now it is our position to determine the liquidity needs and invest **[321]** according to those needs.

Q. Do you do all of this by yourself? A. Yes, we do.

Q. Without anybody's advice? A. We do have a correspondent service with First National and feel free to call on them for advice in making any purchases or sales of securities.

Q. You feel free to call on them? A. Right.

Q. Do you, in fact, call on them? A. We do occasionally.

Q. You described this advice as a correspondent service? A. Right.

Q. You do regard it as such? A. Yes.

Q. Do you pay them in some way for it? A. Yes, we do.

Q. How? A. On a fee basis.

Q. Could you describe what is involved with the accounting function at your bank, the mechanical functions which you have taken over since you have come there? A. This is simply maintaining all income and **[322]** expense ledgers, so we might come up with a statement of condition and also a statement of income for a given period of time, of course, the daily-statement condition.

Q. All right. Do you handle accruals? A. Yes.

Q. What does that involve? A. Simply accruing either income or expenses, and, again, it is a procedure of—an accounting procedure.

Q. What does it mean to accrue income? A. To take a loan for a given period of time, over ninety days, and then for each thirty day period, you would accrue certain or, actually on a daily basis, you would accrue earnings through that date.

Q. If a loan had been made by the branch prior to the time this relationship changed, as you described it, and I assume that the—I am sorry, and if the loan had been credited to that branch, would not this accrual have happened anyway? A. Yes.

Q. What was the change that was involved with regard to accruals? A. The First National Bank of Atlanta maintained the records.

Q. There was a record-keeping function? [323] A. Yes, right.

Q. What is write-offs? A. Write-offs, depreciation, and that type of thing, item.

Q. So that record-keeping function was also—— A. Yes, right.

Q. Could you describe what type of loan functions have been turned back, what you have had to assume? A. Well, they computerize loan ticklers, commercial loan ticklers, and during the transition they terminated that, and we found it more advantageous for us to prepare our own ticklers. We had the personnel to do it. They had done our installment-loan collection work through August 1st; we now do this on our own, based on our personnel. And we do pursue any loans that have been charged off for possible recovery. Those are the basic collection functions.

Q. You do your own collection functions? A. Yes.

Q. What does it mean to prepare a commercial-loan tickler? A. This is simply a record of a given loan coming into a bank, information that is sent both to the customer and kept internally as a reminder for maturity dates and so forth.

[324] Q. And it sent to the customer, you say? A. Yes.

Q. Does this involve such things as coupons on loans? A. It cannot on commercial loans, but on installment loans, it does.

Q. Now, with regard to coupon books, do you make out your own coupons? A. No, we have a service through First National that does this for us, computer service.

Q. What about the mechanical handling of such coupons when they are sent in by the payer of the loan? A. That is done by our tellers, and then our bookkeeping department.

[325] Q. Are they sent directly to your bank? A. Yes, right.

Q. Are these coupons in some way geared to be run through a computer? A. No.

Q. So that all the bookkeeping involved would be payment of a loan is done at your bank? A. Right.

Q. Was this the case prior to the time the relationship changed? A. No.

Q. Do you handle savings certificates? A. Yes.

Q. Do you do all the necessary functions involved with them? A. Yes, we do.

Q. Have you always? A. No.

Q. What was involved in that transfer? A. Primarily on certificates where checks were issued on some sequent basis, quarterly or annually, First National Bank had that set up on a computer and we handled it physically.

Q. Without any computer being involved? A. Right.

[326] Q. How would you break out the mechanical functions involved in your overall loan operations? Would you say a majority is handled at your own premises or a majority through a correspondent relationship? A. The majority is handled on our premises.

Q. On your premises? A. Right.

Q. Does the phrase corporate trust function have any meaning to you? A. Yes.

Q. What does it mean? A. It can mean a number of things. I have occasion to think of stock transfer, handling any type of—well, First National Bank has up until recently handled our stock registry.

Q. When you say First National? A. First National Bank of Atlanta, right.

Q. Up until recently, has handled your stock registry? A. Right.

Q. What is your stock registry? A. Simply a record of all stockholders updated.

Q. So that if a stockholder in your bank were to sell stock to someone else, that transfer would be handled by First National of Atlanta? **[327]** A. Correct.

Q. But not now? A. That's correct.

Q. Who handles it now? A. We do.

Q. Was there any particular reason, to your knowledge, why this was handled by First National of Atlanta? A. A matter of convenience and personnel to handle it.

Q. Is this a difficult function to perform? A. Not necessarily.

Q. The First National Bank of Tucker, to your knowledge, was previously incapable of even posting the sale of stock in the bank? A. I don't know prior to First National's acquisition of the bank. I do not know.

Q. But the time First National Bank of Atlanta gained its interest in First National Bank of Tucker on the basis of what knowledge you gained personally through your own investigation, was even such a function as this something which First National of Tucker could not perform? A. Probably the personnel, they could not have, due to the numbers of transfers and so forth and the time it takes to properly keep such a record.

[328] Q. Is that—is there that much transfer of the stock? A. There was at the time First National acquired the bank.

Q. Now, you say you now do this yourself? A. Yes.

Q. And all registration that's involved with it? A. Correct.

Q. Has the assumption of these additional functions created any need for additional personnel? A. Yes.

Q. Could you describe to us in what way additional personnel has been needed over, let me make it a little more precise. Have you had to create additional positions or have you had simply to fill vacancies? A. We have had to create positions to fill these jobs.

Q. Would you tell me which positions have had actually to be created new? A. All right. In the bookkeeping area, we added a proof operator, head bookkeeper, one full-time bookkeeper and one part-time bookkeeper. In the accounting end of the bank, we added an Assistant Cashier, general bookkeeper. Those are the additions.

Q. All right. Now could you tell me, first of all, [329] what a proof operator does? A. She proofs checks, lists items, totals them and submits them in a cash letter for clearance.

Q. Does she do any of this stamping on checks that sometimes has to be made? A. No.

Q. Someone else does it at your bank? A. Yes.

Q. Who does it? A. One of the assistant bookkeepers.

Q. When you looked around for a proof operator, did you have any difficulty finding someone with the requisite experience? A. No.

Q. Are you satisfied with the quality of the individual you hired? A. Yes.

Q. What does a head bookkeeper do? A. She supervises the bookkeeping department.

Q. Is this the internal function of the bank? A. Yes.

Q. Now is there a difference between bookkeeping and general bookkeeping? A. Yes.

Q. Describe that difference. **[330]** A. Bookkeeping is really the processing of checks. The general bank accounting is in operation only for compiling records and again accruing income.

Q. The general bookkeeping would be an internal business accounting like any business would have? A. Correct.

Q. And bookkeeping means the actual banking? A. Right, right, the processing of checks, handling of checks and items.

Q. Now you also hired a head bookkeeper you said? A. Yes.

Q. You are satisfied with that individual? A. Yes.

Q. Where did your head bookkeeper come from? A. From the Government.

Q. Where did your proof operator come from? A. Off the street, pardon me, off the street.

Q. Somebody who was looking for a job? A. Yes, she had banking experience.

Q. Your full-time bookkeeper, where did he or she come from? A. She was a housewife and came back to the bank. She had been a bookkeeper prior.

Q. She had prior experience? A. Yes.

[331] Q. Do you have a part-time bookkeeper? A. Yes.

Q. Do all of these bookkeepers satisfy you with the quality of their performance? A. Right.

Q. Your Assistant Cashier, what does the Assistant Cashier do? A. It's a backup from the Cashier, but she handles many, many of the operations in the bank.

Q. What about your Cashier, you didn't have to fill that position? A. Yes, I did.

Q. You did? A. Yes.

Q. And your Assistant Cashier as well? A. Right, but there was a Cashier in the bank. That was not a new position.

Q. But the functions made you set up the position of Assistant Cashier? A. Right.

Q. You also gained a general bookkeeper, as well as for the accounting department? A. Right.

Q. That was a new position? A. Right.

[332] Q. As to your Cashier, why was there a vacancy there? A. I did not choose to keep the existing Cashier.

Q. Did you have any difficulty in obtaining a new Cashier? A. No.

Q. From what type of institution, if any, did you hire her away, was it a bank for your Cashier? A. Right.

Q. How about your Assistant Cashier? A. A bank.

Q. And your general bookkeeper? A. She came from a bank.

Q. Based on the experience you have had with looking for personnel in these specific fields, do you feel you would have any difficulty filling the same positions if vacancies occurred? A. Hopefully no.

Q. Regardless of hopefully? A. I think we could fill the positions.

Q. If you should have need of more managerial personnel, for example a Branch Manager in the foreseeable future, is it your experience and belief you would be able to get suitable personnel? A. Yes.

[333] Q. Does the organizational structure that exists at the bank briefly approximate what existed before or would you consider this a complete internal restructuring? A. I would say generally a restructuring.

Q. Does this compare somewhat with the operations you knew when you were a Branch Manager for the Trust Company? A. To some degree, yes.

Q. How would it differ? A. Well, we have, we are a unit bank. It differs in that way.

Q. Now with regard to hiring away an employee from a large bank, what can you offer to him to persuade him to leave? A. Well, financial opportunities, I think. Also, authority with responsibility.

Q. Is it your feeling, based on your own personal experience and what you personally know of the individual in banking, that there might be a fairly good market for you when you look for other people to hire? A. Yes, I think so.

Q. Do you feel you would be able to find these people in the Atlanta area? A. Perhaps so, I believe I could.

Q. You do believe you could. Is it possible that [334] you could go elsewhere also to find them? A. I could, yes.

Q. What typically would you say in your own judgment would be the types of positions that prospective new managerial employees of yours would have? What types of people would you look for? A. I would be looking probably initially for Branch Manager types, people with lending experience, some operational experience and new business development experience.

Q. Are you talking about looking for Branch Managers with all these qualities or different types of people? A. No, looking for individuals with all these qualities.

Q. So a Branch Manager, you say, with lending experience? A. Right.

Q. Do you feel that you gained a good deal of that when you were a Branch Manager? A. Yes.

Q. And what were the other things you said you got? A. Operational experience.

Q. What does that basically involve, briefly? **[335]** A. Just understanding a little bit about what goes on behind the teller's line, where you seek operational help within a bank when problems exist, procedures.

Q. You would want him to be familiar with the workings of the bank unit that's on the street, the office branch, internal operations as well? A. Right.

Q. This would require, I will rephrase that.

Would this require someone with many years of experience in banking? A. Perhaps two to five.

Q. So that relatively young men would be available for that? A. Right.

Q. What about hiring from small banks, unit banks? A. It depends on the experience he gained in a unit bank.

Q. Is it possible that people in some unit banks might very well be qualified from your standpoint to be hired? A. Could very well be, right.

Q. Do you feel that it's difficult to recruit in the Atlanta area? A. So far it has not been.

[336] Q. Why not? A. Well, it's a new bank site, new ownership, a lot of opportunities presently.

Q. Do you regard this as a new bank then? A. Yes.

[337] Q. How long has the facility been in existence? A. Since 1965.

Q. Do you feel that you are completely capable of offering a package to a young, promising bank executive sufficient to lure him away? A. Yes.

Q. Mechanically, what do you do or what would a small bank generally do to go about recruiting in the Atlanta area?

A. I might have, just based on my fifteen years' knowledge, a young man who is looking for a position, the normal procedure would be to contact a bank, if you were, in fact, seeking him, and ask permission to speak with that individual about a job. That is the etiquette, I think, involved, depending on whether they grant it or not, then you begin your conversations.

Q. Have you had occasion to follow this policy? A. Yes.

Q. And you have been given permission to speak with the people you were interested in? A. Yes, right.

Q. And have, at least, some of these approaches been successful from your standpoint? A. Yes.

[338] Q. Are there any other things you can do besides contacting a bank where a specific individual that you are after is working? A. Simply by word of mouth, letting it be known that you have a vacancy or people are aware that there's some growth or branch expansion, and, on occasion, people will seek you out.

Q. People do seek you out? A. Yes, sir.

Q. Could you tell us some of that, have you had any personal experience in that regard? A. Yes, we have had, I guess, about eight applicants from either small banks or the major banks seeking employment with us. By and large, from the metropolitan Atlanta area.

Q. Is that right? A. Because we frequently get resumes, too, from personnel recruiters, saying here is Joe Doake's resume; would you like to talk to him?

Q. Now, these eight that you mentioned, did some of them come from personnel recruiters? A. Yes, three.

Q. Did you hire any of them? A. No.

Q. Have you interviewed any of them? **[339]** A. No.

Q. Why not? A. They wanted to be president.

Q. Where did the other five come from? A. Locally.

Q. They just approached you? A. Yes.

Q. Do they directly contact you or just come into the bank? A. They directly contacted me.

Q. How do you put out the word in the industry, just generally speaking? A. Well, I would probably call First National Bank of Atlanta and say I am looking for a young man; do you know of anybody? And they may make someone available within their own organization. I would probably do the same things for my friends at the Trust Company. And we use Arthur Andersen as our accountants, and I would probably call them and say, you know, be on the lookout for a young man; I need this type of a person with these qualifications.

Q. You say your accountants? A. Yes.

Q. So you might even look in other areas of the financial world? **[340]** A. Right.

Q. Have you hired individuals other than from banks yet? A. No.

Q. All of the people you have hired since you came there have come from some bank? A. Well, financial institutions. I hired a man from a savings and loan association.

Q. Okay. Can you offer—well, let me ask this. Do you offer any pension program at this time? A. No.

Q. Do you offer a profit-sharing plan? A. We don't, but we are working on one to be effective next year.

Q. You are currently working on it? A. Yes.

Q. Did you have a pension or profit-sharing plan at the Trust Company? A. Yes.

Q. You left that? A. Yes.

Q. How do you plan to have the pension—it is only a profit-sharing plan that you are working up? A. Yes.

Q. How do you plan to have that administered? A. By a major bank.

[341] Q. All right. And are the banks in the area, the major banks in the area all capable of doing so? A. Yes.

Q. Is this generally offered as a correspondent service? A. Not necessarily, but it is a service.

Q. Okay. Do you have any concern that allowing another bank to administer such a program might, in any way, infringe upon your own ability to control the actions of your employees? A. No.

Q. Do you feel that having another bank administer that program might affect the decision-making within your bank? A. No.

Q. Do you foresee the possibility of your establishing any branches in the foreseeable future? A. Yes.

Q. Is it possible for a small bank to branch on its own or does it need the help of a large bank? A. We can branch on our own.

Q. You can? A. Yes.

Q. Would you feel that—well, I will withdraw that.
[342] Are there any particular financial requirements involved in branching? A. No.

Q. None at all? A. Just adequate capital, and we have adequate capital presently.

Q. You would not have to raise additional funds? A. No.

Q. Don't you need a certain amount of money to back up the operation of another bank in terms of what the regulatory people require? A. They are more concerned with market areas, as I understand.

Q. I see. Are there substantial financial requirements in branching other than the cost of the physical plant itself and the hiring of personnel? A. No, that would be it, approximately.

Q. All right. Do you plan to—I am sorry, did you say you have enough for your physical plant? A. Yes.

Q. You will be constructing and owning your own? A. We very likely will not, because we would like to expand just beyond one branch, and feel like we can better use the bank's resources by a lease arrangement.

Q. Where do you—how would you go about choosing **[343]** a site? Would you look for an existing physical facility of some sort? A. We do.

Q. But, you have other alternatives? A. Yes, we do.

Q. Taking raw land and developing that? A. Right.

Q. But, are you reluctant in some way to tie up the funds of your bank? A. Yes.

Mr. Doyle: If the Court please, these questions are putting theoretical on top of hypothetical. I think for all of those reasons, this exploration is objectionable, and I make it.

Q. From what you envision, how would you basically describe the mechanics of going about setting up the facility you have in mind? A. Well, we have one little thing to do. We have got to prove to the comptroller that we are a capable manager of a bank, and until such—until they are convinced in that way, they will not allow or entertain overtures. And we are still being proved, so although we dream about branches, that is not my main concern at this point.

[344] Q. You have only been there now for three months; is that right? A. Right.

Q. Is the option of owning your own branch available to you if you want it? A. Yes.

Q. How would you describe the types of customers whom you serve? A. Probably two broad categories, a very broad assortment of individuals and a great number of small companies.

Q. An assortment of individuals? A. Right.

Q. Would you break that down, that assortment, in any way? A. I would say within both the individual and the small business, we have a high ratio of people relating to real estate, either contractors, subcontractors or real-estate sales-oriented people.

Within the individual category we have a good percentage of professional people, doctors, dentists, lawyers, accountants. We have a high percentage of management personnel. By management personnel, medium, middle and upper, middle-income individuals, and then in our area we also have a great number of laborer-types of **[345]** customers.

Q. Do the needs of these people differ in any respect, the banking needs? A. I don't believe so. I think they have two real needs. They are users of funds and they need a depository for depositing checks and paying of obligations.

Q. As users of funds, you mean borrowers, loan users? A. Correct.

Q. How would you describe the span of loan size involved here, small, large, what, from the smallest to the largest that your customers need? A. Well, our lending limit is $60,000, so we can accommodate people to that. And any credit request above that, we would hopefully find someone to buy excess loans, and we would go to one of our correspondent relationships.

Q. How many correspondent relationships do you have? A. Two.

Q. With whom? A. First National Bank and the Trust Company of Georgia.

Q. When you were at the Trust Company branch, [346] were you serving, basically, the same types of customers? A. Similar.

Q. The same categories that you mentioned? A. Yes.

Q. Do you regard yourself now in your position as the president of a unit bank as being just as capable, or less capable, or more capable, as the case may be, of serving all these classes? A. Ego would suggest at least as capable.

Q. Do you have any reason to feel that you are less capable? A. Only the limitation on our lending limits, and we do have availability for selling excess loans.

Q. Are there any other services that you can think of that you need assistance in providing? A. We don't provide trust services, and I would direct them to the bank of my choice for those.

Q. You can refer them to another bank? A. Yes.

Q. Would you feel any concern over directing of a customer of yours to another bank for a service you didn't provide? A. Concern, but not fear.

Q. Given the correspondent services that are available, and which you are availing yourself of, do [347] you feel that you can say that you are fully competitive for serving these customers? A. Yes.

Q. Who are the banks with which you feel you are competitive? A. The C&S of Tucker, the branches of the major Atlanta banks in our area which are located at Northlake, Gwinnett Bank & Trust Company, Brand Banking Company.

Q. Where is Gwinnett Bank and Trust located? A. In Lilburn Square?

Q. Lilburn Square. A. Right. It's about three and a half miles from us.

Q. Please go on. A. Brand Banking Company, First National Bank of Lawrenceville and Peachtree Bank and Trust Company. And I may have left out someone, but they are all competitors and good ones.

Q. You said the branches of the major banks? A. Yes.

Q. Is there any reason why you would just talk about a branch? A. I am not seeking the same market that perhaps a major Atlanta bank would be, such as national accounts.

Q. Do you feel yourself capable of successfully **[348]** serving a national account? A. Perhaps so, but their interest in us, I think, would be minimal.

Q. Aside from them, do you feel you are competitive? A. Yes.

Q. With the branch of the largest bank? A. Yes.

Q. Do you feel that these customers—I will withdraw that. You mentioned that the national accounts go downtown? A. Basically.

Q. I think that was your phrase. Do you then feel—would this preclude the branches from being substantial competitors for this business?

Mr. Doyle: I object to the question. I don't know what he means "branches being substantial competitors for this business." The question is ambiguous.

Q. All right. When a large bank serves a large national account, to your knowledge, does it serve it through a branch? **[349]** A. I have to judge on my previous experience, it would not at the Trust Company of Georgia.

Q. Now you also state that it is your opinion that you are not competing with the branches of the major banks for large national accounts? A. Correct.

Q. Then is it your opinion, based upon whatever experience you have had, that generally branches don't compete for such accounts? In other words, you had a reservation when you were talking about your own experience, which is fine. I am wondering what is the basis of your opinion that you are only competing with the branches? A. I'm just surmising that most of the branches would operate very much in the manner that Trust Company does.

Q. This would be true of any unit bank? A. Unit banks would be different.

Q. Do you feel yourself fully competitive for all other classes of customers with the branches? A. Yes.

Q. If you were to become dissatisfied with the correspondent relationships you are now enjoying with the two banks you mentioned, would you feel capable of switching readily to other banks and sources? A. Yes.

[350] Q. In the Atlanta area? A. Yes.

Q. Would you tell us what correspondent services you would like to have, but which are unavailable to you? A. There are none I desire at the present.

Q. Does your correspondent, or do your correspondent banks ever provide you with advice? A. If I call on them.

Q. Only if you call on them? A. Right.

Q. Is this true also of First National Bank of Atlanta? A. Yes.

Q. Are there any particular others where you generally will call? A. I had occasion to call regarding branch banking. I simply got a very brief answer which satisfied my question.

Q. Do you have frequent need to call for advice? A. No.

Q. When you have, you have been satisfied? A. Yes.

Q. Who makes the competitive decisions for your bank? A. I would, with the approval of the Board of **[351]** Directors.

Q. And you and the Board together constitute the complete decision making apparatus in your organization? A. Right, right.

Q. Could you tell us something about the size of First National Bank of Tucker? A. As of the call date, June 30th, we were about seven million five.

Q. How does this contrast with the size of the branch that you used to administer? A. That's smaller.

Q. This is smaller than the branch you used to have? A. Right.

Q. Do you have any personal knowledge about the growth of the bank prior to your coming there? A. It had been very slow, really a stagnant situation.

Q. Has the brief period you have been there given you any experience that would serve as an indication of how your growth rate is growing now? A. We are growing, we are alive, I think.

Q. You found a noticeable increase? A. There has been an increase, right.

Mr. Stern: We have no further questions.

[352] Mr. Doyle: May we take five minutes to consult?

The Court: All right, we will take a five minute recess.

Cross-Examination

By Mr. Hodgson

Q. Mr. Jackson, I think I want to ask you just about two or three questions. When the First National Bank of Atlanta went out to Tucker and acquired whatever interest it did in this bank, what sort of shape was it in? A. As I understand it, it was in rather grim shape.

Q. And the First National Bank of Atlanta had not started that bank; had it? A. No, sir, it had not.

Q. So, what happened was it was a small unit bank in bad shape out there? A. Yes.

Q. First National went in and tried to acquire it fully and was unable to because of the Justice Department's suit; isn't that right? A. Yes, sir.

Q. And then turned it loose to you and Mr. Morris and your associates, right? **[353]** A. That's correct.

Q. So the real change that's been effected is the new ownership of Mr. Morris and the new management of yours? A. Yes, correct.

Q. What sort of incentive did Mr. Morris offer you by way of proprietorship in this bank when you came? A. I had an opportunity to own five per cent of the bank.

Q. Now you said you thought you had an attractive package to offer other people to come to that bank.

What is that attractive package? A. We would pay perhaps more than the going rate in the banking industry here locally.

Q. In salary? A. Yes, sir, in salary.

Q. How about the opportunity to buy stock in the bank? A. Yes, we would make that available also, right.

Mr. Hodgson: That's all we have.

Mr. Stern: We have no questions.

The Court: You may step down.

Mr. Kinkaid: Your Honor, I notice it's twenty till five. We have one more witness for direct and cross to be followed by our expert witness who we will be making available under our understanding of **[354]** your earlier instructions for cross-examination. I would like to request that if it's all right with Your

Honor, that we suspend for today and we will have the next witness at ten and put our expert on.

The Court: That concludes your case?

Mr. Kinkaid: Yes, sir.

In other words, we have just one witness.

The Court: How long do you and Mr. Hodgson anticipate this next witness is going to take? How long do you anticipate that the next witness is going to take?

Mr. Kinkaid: I would say it would be something like an hour for direct.

Mr. Hodgson: We would hope it wouldn't be much more than five minutes on cross. We can't tell for sure until he has testified.

The Court: You have the expert's testimony, and the only thing, there will be no direct, I take it, for the expert, only cross?

Mr. Kinkaid: Yes, I think as you recall, he put his direct testimony in the form of affidavits which we will ask him to authenticate and that will be it.

The Court: How long is cross going to take of the expert?

[355] Mr. Hodgson: We honestly can't anticipate. It depends on how well we do, how easy we do it. If he is hard to crack, it may take longer.

The Court: At any rate, assuming the schedule that we have here, you should be through with him by tomorrow afternoon?

Mr. Hodgson: Yes, sir, if we can't crack the nut by tomorrow afternoon, we'll go home and start on our own.

The Court: We're rapidly approaching my place of no return for the week after next. I tentatively plan that you would then get the next five days. Then I start counting witnesses and came up with nearly forty. Have you and Mr. Kinkaid made any

estimate on the time? I notice in several cases you would list several witnesses for one category, then when I start reading the categories, I notice that there was a substantial duplication of categories as between witnesses, and then I came to the one where it said, "These people will give their views," and that seemed to me to be awfully general.

Mr. Hodgson: I have every reason to believe you are going to make your schedule. I have one similar to yours. I anticipate, frankly, if we put our witnesses on to the extent that the next witness **[356]** has knowledge of what the prior witness has testified to, we are going to make the point that he has been in this room and does not duplicate, but simply add to the area in which the prior witness has testified. This makes him available to the Department for cross-examination for the whole thing. But, of course, I think we can make our schedule.

The Court: All right, Mr. Kinkaid, knowing what you do with respect to the defendant's case, do you anticipate any rebuttal at this time?

Mr. Kinkaid: I would anticipate some rebuttal at this point. At this time, I really can't say how extensive it would be, but I really don't think it would be very extensive. But I would, if possible, if we could sort of have the better part of a day at the end, I think that would probably take care of it.

The Court: I was trying to divide the time equally. You've taken three days, I was leaving you two days for rebuttal and five days for the defendant which is giving five days each. Do you think you can manage within that schedule?

Mr. Hodgson: We'll have more difficulty than they, Your Honor, simply because the elements of the defense are more extensive than are the elements of **[357]** the charge. But, I can assure you that we will make every effort, we'll be as brief as possible. We are willing if Your Honor doesn't mind the imposition to meet any sort of hours that the Court may set.

The Court: I don't want to get drastic at this early date, but I guess we can make the immediate decision, which is to adjourn until tomorrow at ten.

Mr. Kinkaid: May I bring up one point while we have a couple of minutes, more or less a formality. As you know, we have offered in evidence, I think twenty—I believe twenty depositions that we took during the pretrial stage and we have offered virtually all of these with the, I think, the exception of one or two pages from about three of them. I believe the defendants have themselves offered in evidence whatever we didn't. So, in effect——

The Court: Are they on the exhibit list?

Mr. Kinkaid: Excuse me.

The Court: Are they on the exhibit list?

Mr. Kinkaid: They have not been marked exhibits. Shall we mark them as exhibits and put them in the record that way?

The Court: As far as I'm concerned, I'm willing to receive in evidence all the testimony by **[358]** deposition which has been taken subject to some identification at some point with the right of the parties to object to the parts they deem inadmissible just as you objected to their exhibits.

I assure you I'm not going to sit down and read through all the depositions. I'm going to assume that you will call the pertinent portions there to my attention in the briefs. Can you handle it in that fashion?

Mr. Kinkaid: Yes, sir.

Mr. Doyle: One other housekeeping matter, Judge, the plaintiff objected to the admission into evidence of a certain document. We had some discussion as to the precise wording in one part of it. If I can read a correction, which I think is the correction presently stated or objection presently stated, we won't have any more problem on that. It's on the fourth page

of the document entitled "Plaintiff's Objections to Admit Into Evidence Certain Documents Offered by the Defendant," page four, dealing with defendant's exhibits 41 through 44 in the second paragraph, the first sentence should read, "The defendants have not met the burden of showing that those who responded were without bias, that the questions were unambiguous or that **[359]** the results were reliable."

The Court: Is that correct, Mr. Kinkaid?

Mr. Kinkaid: Yes, sir.

The Court: It will be so noted and be so received. I gather we may not have received a copy of that document; is that right, Mr. Edmondson?

The Clerk: I don't have it.

The Court: Make sure we have it.

Mr. Kinkaid: I believe we've filed that with the Clerk of the Court.

The Court: Make sure we have a copy.
We will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, Court was recessed at 4:50 o'clock P.M., to reconvene at 10 o'clock A.M., Wednesday, September 27, 1972.)

[360] **Volume III**

(Title Omitted in Printing)

Transcript of proceedings had before The Honorable Charles A. Moye, Jr., Judge, United States District Court, on the 27th day of September, 1972, commencing at 10:00 o'clock, A.M., in Atlanta, Fulton County, Georgia.

[361] The Court: Ready?

Mr. Lehman: Yes, Your Honor. The Government will call as its witness Mr. Warren Woolsey.

WARREN WOOLSEY,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lehman

Q. Would you please state your name. A. W. Warren Woolsey.

Q. Where are you presently employed, Mr. Woolsey? A. I am president and chairman of the board of the Citizens Bank of Hapeville.

Q. How long have you been the president and chairman of the board? A. Since August 1, 1971.

Q. Prior to coming to the Citizens Bank of Hapeville, what was your employment? A. For twenty-one years I was with the First National Bank of Atlanta; the last five years I was with the First National, I was vice-president and manager of the Decatur branch of the First National. And I resigned from First National in 1969, in February of '69. I went with Robinson-Humphrey **[362]** Company as an account executive in the Decatur office of Robinson-Humphrey for about seven months and then went with Reynolds Securities as an account executive, specializing in the pension-profit-sharing area. And then, on August 1 of '71, I came with the Citizens Bank of Hapeville.

Q. When did you first learn about the vacancy of the presidency at the Citizens Bank of Hapeville? A. I learned about it about the first week of July of '71.

Q. How did you learn about it, sir? A. I learned about it through my contacts with the Independent Bankers Association. In my work in the pension and profit-sharing area, I conceived and put together a master pension and profit-sharing plan for the Independent Bankers Association of Georgia, and we got this approved by the Internal Revenue Service, and through this

approval of this plan by the Board of directors of the Association and my solicitation of this type of plan, I got to know many of the bankers, and, particularly, the officers of the Association on the other side. The chairman and the vice-chairman of the board of the Citizens Bank of Hapeville were looking for a president, because the man who had been the president had resigned, and he knew Charley Maddox, **[363]** who is the president of the Peoples Bank of Winder, who at that time was president of the Association. So they went to the president of the Association and asked him for help to find a president, and he gave them a list of ten prospects, and my name was at the top of the list.

[364] Q. When did you formally assume your position as president of Citizens Bank of Hapeville? A. August 1 of '71.

Q. And was this when you first arrived at Hapeville? A. No, I actually was there a week earlier. It was the last week in July that I actually came to the bank, but not to assume my duties, but to get a feel for what the problems were.

Q. When you first arrived at the Citizens Bank of Hapeville, who was operating the bank? A. Ken Ingram, who is the cashier at the C&S Bank, Sandy Springs, was there as the acting cashier. Bobby G. Morris was the acting president of the bank and he was one of the C&S branch managers out on the north side. Of course, he is now president of C&S Chamblee.

Q. These were not employees of Hapeville Bank? A. No, they were not, and we were reimbursing C&S for their salaries.

Q. And do you know why they were there operating the bank? A. Yes, they were there at the request of Mr. Howard Jackson, who at that time was Chairman of the Board.

[365] Q. Do you know how long that they had been in that capacity operating the bank? A. I would say they were there about three months.

Q. Do you know by whom their salaries were being paid? A. Well, the C&S was paying their salaries, I knew that, and we were sending—their salaries were being sent to the C&S. In other words, they knew what their salaries were. We were reimbursing the Citizens and Southern National Bank.

Q. Do you know if these gentlemen were utilizing a C&S operational publication at Hapeville at that time? A. Yes, I saw the C&S manuals they had out there and from which they were operating.

Q. Does the bank still utilize the C&S operating guides? A. No, no, sir.

Q. When did they discontinue doing this? A. The day that I was elected president and they left the bank, they took their manuals with them.

Q. Could you please characterize for us the condition of the Citizens Bank of Hapeville when you arrived? **[366]** A. Well, when I—do you want me to take each area of the bank and go into it, or just——

Q. Could you give us just the general, overall picture of the condition of the bank? A. Okay. The bank, of course, was being run by these two C&S men, and I think the morale of the bank was low because the personnel did not know what was going to happen to the bank. A lot of customers of the bank were very unhappy with the way the bank was being, the loan policies were being handled because the C&S people were really, you know, running it on a lame duck basis. They knew they were just going to be there temporarily.

There were a lot of things that needed to be done, the credit files were in a deplorable condition. I think many of the officers that were there were incapable, not the C&S, but other loan officers that were there were incapable people and incompetent people.

The interior of the lobby was, nothing had been done to the lobby since, I think, they moved into that building, I think, in 1969. The parking lot was too small. It was in a generally run-down condition. There were no—there were no bylaws, no loan policies. There was no chain of command in the bank.

Q. Perhaps—what did you consider to be the **[367]** major areas of concern there at the bank? A. Obviously the most important area of concern to me was the loans, the quality of the loan portfolio and the loan policies.

Q. Were there other paramount problems that you considered to be paramount? A. Oh, yes, personnel, I thought was a paramount problem, controls on operations, control on expenses was another big thing.

Q. Let's deal with the loan administration problems. Just specifically, what did you find there? A. Well, I found that—well, let's take the credit files and start with that. The credit files were completely devoid of adequate information to justify many of the loans. The loans were being made without proper documentation, title certificates to cars were in the credit files instead of being in the vault and deeds were in the credit files instead of being in the vault.

So, there was really no adequate credit investigation being made. There were no adequate credit files being maintained as far as the credit administration was concerned. There was no analysis being made on the financial statements and so that we knew right away that there was going to be some substantial losses in the loan portfolio.

[368] Q. What steps did you take to try and alleviate these problems? A. That would take some time to answer. Well, first thing I did was to start hiring adequate and competent management personnel. I got the executive vice president of the Bank of Forest Park, a fellow named Mr. Gaddy, who had been in that position for eight years at the Bank of Forest Park. He also had ten year's experience in the auditing department of

First National Bank. I brought him in as the operations manager and cashier of the bank. His title was vice president and cashier.

I brought in Richard M. Churchill, who had experience in First National. He was in charge of all credit for Bankamericard at First National and also was manager of the credit department at Peoples American and administrative assistant to the senior vice president, and he is now vice president in charge of our loan department. We took one of the loan officers, Frank M. Castello, who was on our loan desk, I took him off the loan desk and made a collection man out of him. I took the branch manager who had worked as a salesman for Pet Milk Company for twenty years and had no training as a loan officer and I am now using him as an auditor. I took one of the other young men we had in the bank and **[369]** made him the branch manager.

[370] I hired a man from—who had been at First National Bank and had been through the training program, two-year executive training program, and hired him as a loan officer. One of the vice-presidents there, who I thought was incompetent, resigned within two weeks after i got there because I was questioning the documentation or the missing documentation on many of the loans he had made.

Q. When you had to go out and hire these new employees, did you have any difficulty in finding them? A. No, sir. No, sir, I have friends and contacts in the employment area where they specialize in hiring credit officers and loan officers in banks; I had no trouble at all.

Of course, Mr. Gaddy had known me previously, and he was unhappy in his position, so he came to me looking for a job. In fact, I probably had ten men to come to me and apply for jobs when they found out I had been made president of the bank. Some of them knew me directly, and some of them had heard of me, and they were unhappy in their jobs and were looking for jobs.

Q. Overall, approximately how many people did you have to replace of the original staff, do you recall? A. I would say, we replaced officers and employees, **[371]** eleven people were replaced.

Q. And what was the total number of your staff at that time? A. I would say we had about thirty-six people.

Q. How long has it taken you to replace these people? A. Well, this was done—this has been done over a year's time. We have gradually replaced these people. I didn't want it to be too much of a shock to go in and just start replacing people, so we had to find adequate, trained, competent people to replace them. So we just did it on a gradual basis over a period of time. So there wouldn't be too much of a shock to the personnel. So I would say it has taken us a year, but I think we have got all the incompetents eliminated now.

Q. Did you have any difficulty with the procedural aspect of the loan administration program as you found it? A. Any difficulties in trying to change it or any difficulties in what was there when I got there?

Q. All right. Any difficulties in trying to change it? A. No, sir. All I did was tell them, "This is the way it is going to be," and we started immediately **[372]** changing. We had difficulties in trying to train people on execution of investigations, analysis of financial statements, all of the various aspects of loan administration that are just absolutely necessary to operate a bank on a sound basis. And, so the educational aspects of how to run a first-class bank were my biggest problem, and this took some time, some doing. But, it was done through writing operational manuals, loan policy manuals on how things were to be done, what the loan policies were going to be. And, of course, we had an executive committee; an executive committee, though, had not really been operating as a loan committee the way I wanted it to be done, and now we have this set up.

Q. Were these manuals that were written, were they written within your bank? A. Yes, we did not require or request any outside help in the preparation of these manuals.

Q. You earlier mentioned, I think, another problem area happened to be in operations. What did you find wrong in operations? A. About everything you can imagine. The main thing was, there was no control on expenses. I think in the first three months I lopped off something like $45,000 in unnecessary expenses on an annual basis. I **[373]** can give you a number of examples, but this was—this is one of the main things.

But, control on income was another thing. For instance, safe deposit box rentals were just coming in, and the clerk was just posting this to a book instead of doing like you are supposed to do and set up a rents receivable account. When the bills go out, and then when the income comes in, you wash out the receivables account. The general bookkeeper was originating many of her own entries without an officer's okay. Well, if she had been dishonest, she could have taken us for a million dollars.

So we immediately said no entries are to go to general books without an officer's okay. This is just standard banking procedure.

Q. Have the problems in this area been eliminated? A. Yes, sir. Yes, sir, I think they have been eliminated.

Q. In your earlier discussion as to the hiring of new management personnel, what does your bank have to offer to attract qualified management people? A. I think we can compete through any area, as far as salaries are concerned. I think our salary scale is comparable to any of the large Atlanta banks. I think, as far as fringe benefits, we have just put in **[374]** a hospitalization and major medical plan that I think is—I know it is as good as what First National had, because that, of course, is the only one I have direct experience with. But, we are

putting in a plan where we will have surgical, hospital and accidental expenses will be taken care of 100%. Any medical care expenses will have $100 deductible, and the major medical will carry it on up to $50,000. And we are going to have this at no additional cost over the other major medical plan that we had.

We have a fixed benefit pension plan, and this plan will guarantee any employee 35% of their salary, up to Social Security and 65% of whatever they make over their Social Security base, which averages out, you know, somewhere around 60 to 65% of their total salary for the last five years.

We have a group insurance plan which starts with me at $50,000, and goes on down to a minimum of $7,000 for each employee. That's about it.

Q. These benefits, these fringe benefits that you have just mentioned, are they made available to you through a correspondent relationship with a larger bank? A. No, sir, they are not. We got these on our own, and it has no connection with a correspondent bank **[375]** on any of these services.

Q. With reference to the pension plan you earlier mentioned, was there a pension plan in existence at the Citizens Bank of Hapeville when you arrived? A. Yes, there was.

Q. By whom was it administered? A. Canada Life Assurance Company, I think was the name of it.

Q. Is it still in effect now? A. Yes, but not by them. We cancelled out their plan. They had a split-funded plan, part of it going for insurance and the other part going into an equity fund.

There had been no contract with the bank since its origination about two years before I got there, so there had been some changes in the Internal Revenue code that had made the plan really—I don't think really eligible as a tax-deductible plan, as a qualified plan because of the changes in the code. So it had not

been updated, and so we just cancelled the whole thing and started all over again.

Q. So this plan is not in effect today? A. No, the original plan is not in effect; that is right.

Q. You earlier mentioned, though, you—— **[376]** A. Let me say this, we are just amending—let me qualify that. We are amending our plan, as far as the benefits and the formula, vesting schedules and so forth, so as far as Internal Revenue is concerned, it is, in fact, the same plan, and we will file an amendment with Internal Revenue.

But, as far as the administration of the plan is concerned, we have changed administrators and we have changed it from a split-funded plan to a non-insured equity plan, 100% equity plan. In other words, we pulled out of the plan disability benefits and death benefits and insurance benefits out of the pension plan and made these separate benefits.

Q. Who now is administering the plan then? A. A firm called Richard Grenell & Associates, which is an experienced insurance—not an insurance, but an employee benefit firm. They handled the administration and file all the papers that are necessary with Internal Revenue.

[377] Q. Just out of curiosity, is this the earlier plan you were referring to with your association with the IBA of Georgia? A. Yes, it is. The plan that I was working on when I was with Reynolds Securities, this master prototype pension and profit sharing plan is the plan that we are now switching over to.

Q. Is this plan made available to other banks? A. Yes, it is. This plan is available to any independent bank in the State of Georgia if they will become a member of the Independent Bankers Association of Georgia and the solicitation of these banks is going on on a fulltime basis. As far as the response right now is concerned, we have been in this about a year on a solicitation basis and I would say we have got six banks committed before the end of this year. They will transfer whatever funds

they have over into this plan. We will have—we have got forty-seven additional banks in Georgia that have submitted their payrolls to us and we will make a decision between now and the end of the year. We know of at least sixty-five other banks that have plans with insurance companies or with banks, large metropolitan banks, and we are working on them, too.

Q. You mentioned we; who is we? A. We is, as far as who the calling is being **[378]** done by.

Q. Who are you referring to as we? A. We is the people that the Independent Bankers Association have delegated to do this work. We have this broken down, we have put together a team of experts to handle this plan. We have the investment counselling firm of Thorndike, Thorn, Payne & Lewis who happens to manage about three and a half billion dollars. They are the investment counselling firm for Wellington, Family Mutual Fund. They have an office here managing about $350 million right here in Atlanta. They will be the investment counselling firm for this plan.

Richard Grinnell and Associates will handle the administration and actuarial certifications on an annual basis on revising of the data, the payroll data that is necessary every year. The calling is being done by Richard Grinnell and two men at Reynolds Securities. They are calling on all of the banks to make them aware of this plan and then, of course, we have attorneys. We have Wesley Warren, who is with Smith, Parker, Scott, Pick & Simmons. He's a specialist in employee benefits, he has rapport with the Internal Revenue. He has gotten plans approved. These plans are what we call now a master plan where the association sponsors the plan and gets it qualified in a shell form. The individual **[379]** aspects of the plan are left up to the president of the management of each individual bank, such as investing schedules, manageability requirements, retirement dates, entry dates, when they come in. Whether there is a minimum age, all of the individual

aspects of a plan are designed by the local management. Only the shell is submitted to Internal Revenue. It's a joinder agreement that each bank signs to come into the plan. There's one master trust set-up for the pension plan, the six benefits pension plan. There's another master trust that will be set up for profit sharing plan. There's another trust that will be set up for first pension plan because there is slightly different handling.

Q. As to the pension plan, would this also be available to the customers of the bank if they wanted to establish it? A. Yes, they will. We are in the process of receiving a no action letter from the Securities and Exchange Commission to be sure we would not in any way infringe upon the rules and regulations of the Securities and Exchange Commission and our attorney feels that there will be no problem about getting this letter. If there is any problem, we will name a bank with trust powers as a corporate trustee. This plan is now an individually trusted plan with three of the officers and directors of **[380]** the association as the trustees, and I am one of them.

Q. Are the member banks of the IBA utilizing this plan: are they charged? A. Oh, yes, they are charged. They are charged a fee for the administration, for the investment counselling services, and we are charging one and one-fourth per cent of the corpus that is accumulated on an annual basis to take care of all expenses.

Q. Does the Citizens Bank of Hapeville have a profit sharing plan in effect? A. No, sir, we don't. There was no plan when we got there. We had to take first things first. We are just now in the process of turning the bank around and making a profit and until I can show a record of several years of consistent earnings, I don't feel that a profit sharing plan is justified. The pension plan, I felt, was the main thing that needed to be done to get that set up correctly. If we can do this and be within Internal Revenue rulings, and their regulations, and then we will put in a profit sharing plan. One of the rules

Internal Revenue has, you can't put more than twenty-five percent of your payroll in a pension plan and profit sharing plan when you have both. And so, the question is, after I have funded my pension plan, is there really enough money available that could be put into a pension, a profit **[381]** sharing plan and make it a real good thing for the employees. There may not be enough money left over, but there is a limitation of twenty-five percent.

Q. As to the IBA investment profit sharing plan, this is available to small member banks also? A. Yes, if they are members of the association. They have to become a member of the IBA to join.

Q. I assume this is operated on the same basis as a pension plan? A. You're talking about profit sharing and pensions?

Q. Yes. A. That's right, they are both the same.

Q. Again, would this profit sharing plan, this master profit sharing plan be available to customers of independent banks? A. Yes, they are, and we have gotten a number of payroll data sheets and got a couple of them right on the verge of signing up. Most of the customers don't have existing plans. Most of the customers, they have been wanting something in employee benefits area and just haven't had anybody approach them to do it.

Q. For those earlier fringe benefits you mentioned, such as insurance policies, et cetera, are these made available to you through services of **[382]** correspondents? A. No, sir—you mean insurance policies for my group, group insurance?

Q. Yes. A. No, sir.

Q. When you first arrived at the bank in Hapeville, who was providing your bank correspondent services? A. Citizens and Southern National Bank.

Q. Were there any other banks providing any services? A. We had accounts with other Atlanta banks but they were small accounts. The main account was with the C&S.

Q. Did you consider at that time then C&S to be a primary correspondent? A. Yes, I do.

Q. What services was C&S, were C&S furnishing you? A. Everything in the book, DDA, that's demand deposit accounting, savings certificates, savings accounts, clearance of checks, investment portfolio, Government bonds, municipal bonds, payroll preparation, they were preparing our payrolls, just about everything that they can do.

[383] Q. Is C&S still your primary correspondent bank? A. No, they are not.

Q. Do you have a primary correspondent bank now? A. Yes, I do.

Q. Who is that? A. Central Bank & Trust Company at Birmingham.

Q. Was the Central Bank & Trust Company a correspondent of your bank when you first arrived? A. No, they were not.

Q. Then, I assume you had to set up, establish a new correspondent relationship? A. That's right.

Q. And first of all, was it difficult in finding a correspondent, a new one? A. No, sir. No, sir, in fact I had all the other banks come out and solicited my business. Fulton, First and Trust. There was no trouble. In effect, I was solicited by Central & Trust of Birmingham, too, and of course, the man who called on me used to be one of my junior officers at the Decatur Branch of First National. So I knew him from that connection.

Q. In the banks that you listed as soliciting your correspondent services, were there any other banks, other than Central that were out-of-state banks? **[384]** A. Indirectly,

through one of my Board members, the Hamilton National in Chattanooga have indicated an interest in being our correspondent, too.

Q. Is this relatively unusual to have an out-of-state bank solicit correspondent services? A. I would think so. I was surprised.

Q. Do you know of other banks now that are utilizing out-of-state correspondents? A. Yes, sir, there are lots of them, lots of them in Georgia. Central Bank has got at least eighteen in Georgia, I've been told, where their bank is, where Central is their primary correspondent and they have got, there must be sixty other banks or something like that, I'm not sure of the exact figures, where Central is their secondary account. I'm not real sure of that number, of course.

Q. Based on the number of banks that solicited your correspondent services, would you characterize the market, correspondent market as the buyer's market? A. Yes, I would. Yes, I would. I think all of the Atlanta banks and all the main metropolitan banks have to solicit this kind of business.

Q. What problems did you have in setting up a new correspondent relationship? A. Well, there is always a conversion time for **[385]** getting things converted when you're pulling out of one bank and going into another bank to make sure that the systems are capable, to make sure you are not sacrificing some services.

Q. By converting, what do you—— A. Well, the conversion, that is, you go from one computer system to another. The data that is printed out may not be compatible. So, there may be a conversion of data that are magnetic tapes or with computer tapes before you can put it on a new system. We are still in the process of converting. Central Bank has got our demand deposit accounts and now have got our savings certificates and savings accounts. We are right in the middle of installment loans. This is a highly complicated process

and we are trying to get—we have got half our loans on Central and half on C&S systems. We are trying to get the other half off of C&S and get it on Central. So we have one instead of two.

[386] Q. Are most of these services provided you, are they linked with a computer? A. Yes, they are.

Q. From your last answer, I assume that you are still utilizing C&S National as a correspondent, also? A. Yes, we still—yes, we are, for the residue that they still have.

Q. What is this residue? A. Half of the installment loan portfolio and payroll preparation. That's about it. Everything else is converted, I think.

Q. Earlier you stated that the Central was located in Birmingham, Alabama. Does this distance present any problem for you, as far as the correspondent relationship? A. No, sir, it does not. They pick up our checks about 7:00 o'clock at night, and I understand they are back in Atlanta the next morning to be presented to the Federal Reserve. They have already been processed, sorted, and ready for presentation at the Fed.

Q. Would this be the major area in a correspondent-type relationship, where you probably would run into a time problem? A. Yes, normally you would, because of the **[387]** distance from Atlanta. The way they are handling it, taking our checks to Birmingham and bringing them back, really early the next morning so that they are here when the Federal Reserve opens up, there is no problem about time.

Q. What mode of transportation are you utilizing? A. Air, by plane.

Q. Since the initiation of your correspondent relationship with Central, have you had an occasion to participate in loans above your legal limit? A. Oh, yes, I surely have, quite a number of times, and they have given me excellent service.

Q. The time factor involved, because of the distance, does not play a part? A. No.

Q. Why not? A. I guess because we communicate with them. We get on the phone and we outline what the credit situation is, what the net worth is, what the borrowing experience has been with the customer, what our collateral is going to be, what our repayment terms are going to be, what kind of rate we are charging. And their answer usually is, we will credit your account today for sixty thousand, a hundred thousand, or whatever it is, and you go ahead and send us the papers. So we have **[388]** had no problem on cooperation on participation on loans.

Q. Since your arrival at Hapeville, have you had occasion to participate with any other banks in loans? A. Yes, I have. I have participated with the Farmers Bank of Monroe on some loans, where in that case they were participating with us. They had a problem on a loan and wanted us to take a participation, so we took $160,000 participation. This is kind of a two-way street, but we have not sold participations to any other bank, except one, and that is the First Bank of Morrow—no, wait a minute, First State Bank of Clayton County in Morrow. We have sold participations with that bank, have handled participations with that bank, but it has been a relatively small amount, you know, $40,000, $50,000.

Q. From your banking experience, are you aware whether a large correspondent bank would provide its smaller correspondent bank with temporary personnel? A. Yes, I think anytime a small bank gets into trouble, personnelwise, and desperately needs some temporary management talent, I think a large bank would provide this.

Q. Would this be a usual service? A. Well, I think it has to be an emergency-type thing, like it was in Hapeville. I think that was an **[389]** emergency-type situation, where the president was asked to resign, and they had to have somebody run the bank until they found a new president. So the president—the

chairman of the board went to Mills Lane, and said, "I have to have—I need somebody, and I would like for you to provide me some temporary management help." So I don't think this is—I think it has to be usually a crisis situation before they do ask for that, but it is not a routine thing to ask for officer personnel.

Q. Who would pay for the temporary personnel then? A. I think the bank, the small bank that needs the personnel usually pays, I would think.

Q. Would this temporary personnel, would this apply both to managerial and employees? A. I don't think it would pertain to employees usually. Unless there is a—I don't know what the circumstances—if the management of the local bank has staffed his bank adequately, and I have never heard of a city bank providing employee personnel for a small, country bank.

Q. Does the Citizens Bank of Hapeville provide a credit card service for its customers? A. Yes, it does, the Master Charge.

[390] Q. Do you utilize a correspondent bank for this service? A. No, sir, we are hooked directly onto SEBA for this we are on our bank, we are not going through any other bank.

Q. You are locked directly onto what? A. The SEBA.

Q. Which is—— A. Which is the Southeastern—it is the unit that handles Master Charge; I don't know exactly what SEBA stands for, but it is the unit that has computer capability for providing us direct service. In other words, if we went through a correspondent, the correspondent would handle all of the credit investigations, as well as the issuance of the cards. We are doing our own credit investigations and we have our own plan to originate the customers that come in, and we send that data to the computer center, the SEBA computer center.

Q. So you are a type of agent for the card; would that be the proper term? A. Yes, we are an independent agent for the card, right.

Q. I take it from your last answer that a correspondent, a large correspondent would also—could **[391]** also provide this for a smaller bank? A. Yes, they can.

Q. And does, in fact? A. Yes, they do.

Q. Why don't you utilize a correspondent for this service? A. Because we just want to be independent. We wanted to, also, because we were sensitive to the credit, the lack of credit standards that were in the bank prior to my coming there. I wanted to make absolutely sure that we had a control on high credit standards that we would maintain on anybody that we gave a Master Charge card to. Because, as you know, this is unsecured credit, so I wanted to control on the Master Charge. business. Not that I had any doubts that the Atlanta banks couldn't pass on the credit, but I just wanted to have control on that.

Q. Excluding the computer services offered by the large correspondent banks, are there any other sources of computer services a small bank can turn to? A. Oh, yes. The independent banks are forming, in Georgia, are forming regional computer centers. There's one in Cordele, Georgia that has twelve independent banks in it. They not only have gone in together on computer services for the EDA savings **[392]** accounts, all of the accounting aspects of the bank, but they have also centralized their purchases of supplies, their software, all the paperwork that is involved in the bank is being centralized.

I know there's twelve banks in Cordele. The other bank, the other group that is in existence and in operation is up near Winder, Georgia, and there are eight banks in that group. There are two more regional computer centers that are on the verge of coming into existence, and I think within the next year they will be in existence. These are computer centers sponsored by and originated by the independent bankers in Georgia. They have nothing to do with the Atlanta banks.

Q. So these computer centers are not computer centers of larger banks; is that correct? A. That's right, that's right. They have nothing to do with the larger banks.

Q. In mentioning the purchase of software, did you mean for the computer centers, these banks are grouping for the computer centers? A. No, not for the computer centers, for the individual banks, cash tickets for the tellers, stationery, all of the envelopes, all of the things that are used in mailing statements out, they have centralized their purchases of these supplies.

[393] Q. Where do you purchase the supplies for your bank, Mr. Woolsey? A. Murphy & McWhirter is where we get some of them. Also, we have—the Central Bank & Trust has an outlet where we purchase our supplies, and we get them at fifty percent of cost. Apparently, they are picking up the other fifty percent of the cost of our supplies, so we are using them to some extent.

Q. Prior to the establishment of Central as your correspondent bank, did you utilize any other banks, the purchasing departments of banks? A. No, we are not utilizing their purchasing department, as such. We are purchasing our own supplies and I don't know the name of the other firm; they are just—as far as the billing is concerned, we are only getting billed for half the cost, so we don't actually use their purchasing department, as such.

Q. Since your arrival at the Citizens Bank of Hapeville, have you had an occasion to have an audit performed? A. Yes. It has been done by the Central Bank & Trust of Birmingham.

Q. From your banking experience, do small banks like yours normally utilize a correspondent, larger **[394]** correspondent banks for this auditing service? **[395]** A. Yes, I think this is the normal thing. They can be done or they can use a CPA firm. Their own private accounting firm can do this audit. I don't—since I'm not in a correspondent area, I can't name what proportion of the small banks use independent CPA firms

and what proportions use the Atlanta banks or some large metropolitan bank.

Q. Is there any reason that you know as to why—excuse me—a smaller bank would use a CPA firm rather than a large correspondent bank? A. Yes, I think one of the big reasons would be that when an Atlanta bank comes in and makes an audit they know all of the intimate details about the operations of that bank and they could put a yardstick as to whether this would be a desirable bank to buy later on, try to get control of. I think would be—this would be an objection I'd have to having an Atlanta bank making an audit on my bank.

Q. Does that answer, in a sense, state the reason why Central Bank is running your audit? A. That's exactly right.

Q. This is one time when distance is a factor? A. That's right, distance is an advantage.

Q. Now, Mr. Woolsey, are you aware of any services that a large bank provides that you cannot provide **[396]** your customers? A. Yes, I think one area would probably be the trust services. We have no trust powers in our bank. So, any customer that came in that wanted to have the bank named as a executor of his will, something like this, we would not be able to provide that service.

Q. What would you do with a customer such as that? A. If he wanted to have a corporate trustee or corporate executor, we would probably send it to a large bank, if we did not have that power.

Q. When you send a customer, such as this, to a larger bank, is there any type of referral fee involved? A. I really don't know because since I have been at Hapeville we have really not gotten into this. I have not had a customer coming in and asking for this service in the one year I've been there. But, I think this is something that is negotiated with a big bank. There might be a splitting of the fee. I'm not really sure.

Mr. Doyle: I move that the last answer be stricken. He stated he didn't have a basis for his knowledge. It was more of an estimate than what he knows.

The Court: I agree. That's the kind of answer—there's no need to strike it.

[397] Q. Are you aware of any other services, other than trust services, that a large bank provides that you cannot provide? A. No, sir.

Q. Do you feel that the inability of your bank to provide a trust service for one of your customers puts you at any particular disadvantage? A. No, sir.

Q. Why? A. Because I think if a customer of our bank wants that service, we can refer him to someone that's competent, like a bank that has a corporate trustee, trust department and get him taken care of and still not lose a customer. I don't think that would in itself cause that customer to move his account to another bank.

Q. It appears from our previous discussion you faced quite a problem when you went to the Bank of Hapeville. Have you succeeded in eliminating it? A. I hope so because we did have monstrous problems with the loans particularly. That was the most critical area because this is the area in which you can lose the most amount of money in a short time. And we were trying to do everything simultaneously, shore up operations, get adequate personnel, charge off the bad loans and generate good new loans at the same time. And **[398]** when you're trying to do all of this at one time, you have got your work cut out for you, and we had quite a time getting this turned around. I think we have got it done. Our loan ratio, when I walked into the bank, was about fifty-nine percent over deposits. After we got through charging off the bad loans, it got down to forty-one percent. It's now back up to sixty-one percent. We have registered loans which in six to nine months will run that up to sixty-five percent of our total profit. I think we have got the

good loans coming on strong. There has only been two loans charged off since I've come on the scene. One is for $900 and one is for $600. Every loan which has been charged off was made prior to August the 1st of 1971.

Q. As far as those loans charged off, other than the two you mentioned, since you had arrived there, do you know in dollar amounts how much was charged off? A. Yes, I know how much.

Q. Could you tell us, approximately? A. I could, but I prefer not to.

Q. Fine, I withdraw the question. Could I have a moment, Your Honor?

The Court: How high can you safely run the ratio of loans?

The Witness: This is an arbitrary thing in **[399]** the large bank, of course, as C&S people well know it can go up to eighty percent or higher.

The Court: You are getting to my question. I'm asking you with respect to yourself.

The Witness: To my bank, I have asked both the FDIC and State Banking Department for guidelines on this point and they have given me no guidelines at all. I think the quality of the loan portfolio has a lot to do with it. If you've got a solid portfolio, I think they will allow it to go higher. They will not give me guidelines. I would say seventy to seventy-five percent would be the top I would want to go. I think that would be a real good loan portfolio to be that high. It really is a gray area, and really——

The Court: With respect to your bank's income, how much of it is attributable to loans?

The Witness: I don't mind giving you the profitability figure.

The Court: I mean, relatively.

The Witness: Relatively, I would say—I would say right now it's about sixty percent, sixty-five percent is loans. When I get all the loans on a string I want, I think it will be seventy-five percent.

[400] The Court: What type of income constitutes the other thirty-five percent?

The Witness: Most of it, I would say ninety percent of the other income is municipal bonds and interest on Government bonds.

The Court: Which you are holding as investments?

The Witness: Right, this is all the monies, our depositors' monies, capital of the bank that's not invested in monies either in Federal funds, municipal bonds or Government bonds.

The Court: What kind of loans, if you can generalize, constitute that sixty-five percent, sixty percent that you now have?

The Witness: What kind of loans? They constitute installment loans. They are handled on a monthly payment basis. They constitute construction loans, land acquisitions, land development and construction loans. These are not apartment projects. We are about—we concentrate just on residential homes. We concentrate only on builders who have a prior record of performance. For instance, I put John Spencer, who is president of Roy D. Warren on the Board so I could funnel the people he is making personal loans to, he is a **[401]** mortgage broker originating mortgagee, he wants the permanent loans. We are handling the construction loans and feeding him the permanent loans. So, this generates a good volume of constructions loans. Many of them are business loans to the people in the Hapeville area and East Point, College Park, Riverdale, Union City, Fairburn, that whole area down there. And we are finding that we can regenerate the good quality of loans by being highly selective and remain high on our credit.

[402] The Court: Have you taken construction loans and funneled them? Does that or not mean that you are not being in competition with the savings and loan?

A. Right, as far as the loan side.

The Court: Which does it mean?

A. It means we are not in competition with them as far as those loans are concerned. As far as the loans, sir. We are in competition with them as far as savings are concerned, on the deposit side. As long as we are not handling the permanent loans, that's right; I have to say we have made a very few highly selective long-term loans, and when I say long-term. I am talking about not more than ten years on real estate, but it is usually a most unusual situation and is not real estate. I mean not residential loans; it is usually a commercial situation.

Mr. Lehman: If I may just have a moment.

The Court: Well, we have gone for an hour; let's take a ten-minute recess.

(Whereupon a ten-minute recess was had.)

Q. I have just a few more questions, Mr. Woolsey. Could you tell us the size of your bank, as far as **[403]** assets, deposits? A. Total assets about $20,000,000, and total deposits about $18,000,000.

Q. Do you recall the size when you first arrived there? A. It was about the same size, as far as deposits were concerned. We lost probably a million and a half dollars in CD's, certificates of deposit, because the bank was paying 7½% on some of those, and I just let them run off. I didn't want to pay this kind of rate. But, I think the bank just came down just a little bit and it has come back up to about where it was when I took it over.

Q. Since your arrival in Hapeville, have you had an occasion to or where your loan deposit ratio has reached what you would

consider to be maximum? A. No, no, I feel like we still have some room to increase our loan portfolio.

Q. Do you know what you would do when that occasion occurred, if it occurs, as far as if you have continued loans coming in? A. Well, we'd just have to turn them down. Once we reach the point where we have reached what we consider to be a prudent percentage of our loans to our deposits, then we will just have to cut off the loans. **[404]** Or as loans mature, in order to make new loans as the ones mature and are paid off.

Q. Now, to perhaps clarify a point—— A. Let me, let me say one other thing. If a real good customer comes in, instead of just turning him down, which would make him move his account, we might talk to Birmingham about taking a 100% participation in a loan. So we would try to serve our customers and not just let them go to another bank. We try to keep our account relationship fine and place the loan for them.

Q. By 100% participation, what do you mean? A. They would take the whole loan, they would take the whole loan. We would not participate in any part of that loan.

Q. Would this operate any differently in procedure than your normal participation with Central? A. Well, it might be that we would handle the paperwork. We would close the loan, but we would not put any money into the loan. The money, the proceeds would be advanced by our city correspondent.

Q. Would you still receive a percentage for handling that loan? A. It might be, uh-huh, we might get a percentage of the rate as a servicing fee for handling the paperwork.

[405] Q. Now, to clarify a point that we had earlier discussed as to what services your bank does not provide that a large bank does, you have mentioned trust services. Does your bank provide a lock-box service? A. No, that's right; it does not. We do not have a lock-box.

Q. Why is that? A. I think because the nature of our customers are such that we don't have but very few national concerns who are worried about the availability of funds. This is the purpose of a lock-box. The customer of the banks has his customers mail his check to the mailbox, and then the bank periodically during the day picks up these remittances that are coming in, and does the depositing of the checks for the customer. And lots of times when money is deposited and the balance in the account exceeds X dollars, the money is wired to the home office of that company, so that the home office has the availability of the money, and it reduces the flow. We just don't have that kind of customer. We have what I think is a very strong penetration in the local market, and we are a local bank, and we just don't have that kind of national concern doing business with us.

[406] Q. How would you categorize your customers? A. I would say most of them are local, local customers. But, we have got excellent penetration, so we are doing the business that we think we can do the best.

Q. Does your bank offer letters of credit? A. Not directly, no. No, I think that this could be done with a correspondent.

Q. Have you had occasion to do it? A. Not in the year I've been there.

Q. Does your bank also handle any type of international transactions? A. No, we just don't have the type of customers that would do that, either.

Q. If you were to have such a customer come in, would you be able to handle it through a correspondent? A. Through a correspondent, yes, yes.

Q. Earlier when we were discussing the recruiting and going out and getting new personnel, are you aware, are there any specialized agencies for bank personnel? A. Yes.

Q. Did you utilize this? A. Yes, I did.

Q. Do you recall for how many of your personnel? A. One. My loan officer was the one that—my vice president in charge of the loan department is the one **[407]** I got from the employment agency. The others came to me, like I say, I picked out the ones that came to me when they heard when I had been made president of the bank. They either knew me directly or had heard about me. I had no problem getting the people I needed.

Q. Now, as we also discussed earlier, Central is your primary correspondent. Now, perhaps I may not have this term correctly. Do they handle your municipal bond portfolio? A. No, they do not.

Q. Who handles that? A. Trust Company of Georgia handles that. And the reason they do that, first, is because no one in Alabama can know as much about Georgia municipals as a bank in Georgia. You have to have someone who is knowledgeable and makes a market in Georgia bonds. I'm using Trust Company of Georgia just for that one service.

Q. Does your bank have a blanket bond? A. Yes, we do.

Q. By whom was it provided? A. Saint Paul Fire & Indemnity Company and for $1 million, bankers blanket bond.

Q. You are not using a correspondent for the provisions of this? A. No.

[408] Q. Does your bank also have a disability insurance program? A. Yes.

Q. By whom is this provided? A. This is provided by the—it's sponsored by the Georgia Bankers Association and it's through Georgia International.

Q. Again, I assume you are not utilizing a correspondent for this service? A. No, no.

Q. One final question, when you arrived at the Citizens Bank of Hapeville, did C&S own stock in that bank? A. Yes, they did. They owned five percent.

Q. Do they now? A. No, sir, I bought them out.

Mr. Lehman: I have no further questions, Your Honor.

Cross-Examination

By Mr. Doyle

Q. Mr. Woolsey, in your testimony about the bad shape your bank was in when you found it, I believe you also told us that C&S management had been in the bank, Ken Ingram and Bobby Morris, for only three months? A. That's right.

[409] Q. The bad shape that you have described, then, originated and began before that three month's period; did it not? A. Right, it certainly did.

Q. You testified, I believe, that C&S had been asked to provide management by the owner of the bank, the then owner of the bank? A. That's right.

Q. Do you know that that request was also a request that was made by the Federal Deposit Insurance Corporation? A. No, I had no knowledge of that.

Q. Do you know that Federal Deposit Insurance Corporation had in effect required the prior president to resign? A. Oh, yes, I knew that.

Q. And that was the man who was president before this three month's caretaker period? A. That's right.

Q. And during that caretaker period, wouldn't you agree that C&S had no opportunity during that period of time, because of the caretaker relationship the incentive to put in its own systems? A. Operational systems you are talking about?

Q. Yes, sir, I mean to change the bank over and **[410]** put in its total operational system for a three-month period? A. Right, they didn't know how long it was going to be that they were going to have to do this when they went out there. You are right, they knew it was a temporary situation so they did not change the system in any way.

Q. Right. And during that three-month period, an effort, of course, was being made to sell the bank and bring in new management for the bank? A. Not sell the bank, not that I know of.

Q. To bring in new management for the bank? A. Bring in new management.

Q. You did, in fact, purchase a substantial amount of stock in the bank; did you not? A. Yes, I did.

Q. Better than fifty percent? A. Yes.

Q. You had no difficulty in purchasing that five percent stock which had been owned by C&S holding? A. No, they were most cooperative.

Q. And the purchase of that bank and in the purchase of that stock, we agree that you bought more than nfty percent? A. Yes, fifty-seven percent.

Q. You financed your stock purchase with Central **[411]** Bank in Birmingham; did you not? A. Right.

Q. Can you tell us what your interest rate was on that loan? A. Prime.

Q. Were there any compensating balances discussed at the time? A. No, sir.

Q. Did that factor have anything to do with your choice of Central Bank as your principal correspondent? A. It surely did.

Q. Was another factor that entered into your choice of the Birmingham bank as your primary correspondent your concern about turning your demand deposit accounting and your participations over to the downtown banks who were your com-

petitors? A. Yes, it was my concern, when I went in, that C&S had my demand deposits and have a branch down the street from me and were my competition.

Q. And the point was you simply didn't want that kind of information on your bank available in the hands of any competitor in Atlanta? A. Exactly.

Q. C&S, all the rest of the downtown banks? A. That's right.

[412] Q. And could you, in your estimation, use a Birmingham bank as a correspondent with the one-day delay in handling if you had major business accounts who were concerned about the need or money and availability? A. You made a presumption that is not correct, that there's a one-day delay.

Q. You don't offer lock box services? A. That's correct.

Q. You don't have concentration accounts? A. No, sir.

Q. Now, do you, in the management of your bank today, Mr. Woolsey, receive any regular management reviews on a continuing basis from any other source? **[413]** A. No, I have invited Central Bank to come to our board meetings, if they wanted to, because—particularly in the beginning. Of course, they had the stock that I had bought as collateral to their loans, so to assure them that the bank is being run correctly, I invited them to attend our board meetings if they wanted to, and they attended one meeting and that was the first meeting, and they have not ever come to another meeting.

Q. That was the first and only meeting? A. The first and only meeting. They were convinced, apparently, that the bank was going to be run sound.

Q. Do you ever furnish them with statistical data on your bank? A. No, sir, no, sir.

Q. Do you regularly receive back from them any sort of suggestions as to what you ought to do about it? A. No, sir, I

never contact them unless it is on a participation on a loan. That is the only contact.

Q. You clearly, from your direct testimony, have not received from them general operating guides or any such as that? A. No, sir; no, sir.

[414] Q. You told us that you had one audit provided by them—— A. Right.

Q. To this point? A. At my request.

Q. Yes, sir. And that is not available to you, according to your understanding with them, on a regular continuing kind of basis? A. They have offered it to me on an annual basis.

Q. Once a year basis? A. Once a year basis with no charge.

Q. Right. You don't use Central Bank of Birmingham as a regular source of personnel assistance? A. Right.

Q. They don't provide any pool of personnel for you to meet your absences or demands or any such as that? A. No, sir.

Q. Do they provide to you any surprise audits so that no one in your bank knows when the audit is coming? A. This operational audit is a surprise audit.

Q. Is it a surprise to you? A. Yes.

Q. You request it, though, don't you? **[415]** A. I request it, but I don't know when it is coming. An audit is not a good audit unless it is a surprise audit.

Q. Do you receive credit audits from them? A. No, this is operational audits.

Q. Do they provide you with any standardized general ledger accounting system? A. No.

Q. Do they regularly include your staff or your employees in any schools or training programs that they have? A. I am the only one that has ever gone to Birmingham. (Witness shakes head negatively)

Q. All right, sir. Now, you told us about the development of the master pension and profit-sharing plan of the Independent Bankers Association, and you told us, I think, five or six banks presently have that. How many independent banks are there in the IBA and in the state of Georgia today? A. As far as members of the association, 206.

Q. I see. A. There are actually, of course, many more independent banks that are not members of the Association. probably closer to 300 in Georgia.

Q. And at this point, five are members of the **[416]** master pension and profit-sharing plan. You told us that each bank has its own qualifications and its own—— A. Its own joinder agreement that has to be signed.

Q. Yes, sir. Therefore the employees in Bank A can be on a different schedule of contributions and benefits and the rest? A. Right.

Q. Is that right? A. It has complete flexibility.

Q. The employees in Bank A, therefore, are not able to transfer their benefits on an equal basis if they moved to Bank B, are they? Because they have different schedules and that sort of thing. A. Right, right, I don't know of any portability to the benefits.

Q. All right, sir. And basically, I understand from your direct testimony that the Citizens Bank of Hapeville does not compete for the large corporate customer? A. Oh, we would like to have it, but we are not set up like they are.

Q. Yes, sir. And you are competing primarily for the small customer, the small personal customer and the small business customer? A. Right.

[417] Q. And you find that that competition is in a localized area, as I believe you testified? A. Right.

Q. In that part of South Fulton, I suppose Hapeville, East Point, College Park, and the communities in that area, do you also—— A. (Nodding affirmatively.)

Q. Can you tell us what percentage of your personal customers, individual customers, live or work in Hapeville? A. Right in the city of Hapeville?

Q. Yes, sir, or in the surrounding, in the immediate adjoining area. A. I would say probably fifty percent, forty to fifty percent.

Q. Is that either live or work or both? A. No, no, no. As far as—if it is live or work, it is probably ninety percent.

Q. Yes, sir. And forty percent live, you would figure something like that? A. I would say would live there, right. In other words, we have got—we have got 17,000 people at the airport. Got 6,000 people at the Ford Motor Plant; we got probably 2,000 people at Owens-Illinois Glass Plant.

[418] Q. Right. A. Those people don't all live in Hapeville.

Q. Correct. A. They live all over Atlanta, and they come to Hapeville for their employment and, for that reason, we are getting many of their accounts.

Q. Right. So perhaps ninety percent of the people, of the individual accounts that you have, originate from customers who live or work in that immediate surrounding area? A. Right.

Q. What percentage of your commercial business customers are located in Hapeville, Forest Park, East Point, and the Palmetto area, would you estimate? A. You talking about loan customers or deposit customers?

Q. Well, talking about both of them. A. I would say ninety percent again.

Q. All right, sir. So, then, the area where your bank is, your bank is a localized bank, I believe you told us, and is the area

in which you compete effectively for business then in that area that you have just described to us? A. Uh-huh, that's right.

Q. All right, sir. **[419]** A. Of course, numbers are misleading, though. One customer can borrow $1,000,000 and make up for a lot of small customers, and we have some substantial customers that are not in Hapeville that are doing business with us, because they think we are giving them a good deal.

Q. Yes, sir. Do you have any customer presently who are borrowing that $1,000,000? A. Yes, sir, sure do.

Q. You do. Based on your competition from the Citizens Bank of Hapeville, then, has it been your experience that all of Fulton County constitutes one market? A. Yes, sir.

Q. In which your bank competes. A. Yes, sir, DeKalb County, Clayton County, Cobb County and Fayette County. We are getting business from all those places.

Q. Now, when you were with First National Bank in Decatur, that branch was then located in the city limits of Decatur? A. Yes, sir.

Q. Where did the majority of your business while you were there come from? A. I would say from DeKalb County, all over the **[420]** county.

Q. While you were there, did you attempt to create a local image while you were at that bank? A. I guess I did.

Q. You had been born and raised in Decatur? A. No, I wasn't born there, but I was raised there.

Q. Raised there and gone to high school there? A. Right.

Q. All right, sir. Did you regard the First National Bank of Decatur as an effective competitor in the Chamblee area? Was it as effective there as it was in the city limits of Decatur? A. Did I? Wait a minute; say the question again, please, sir.

Q. All right, sir. Was the First National Bank of Decatur your branch? A. Yeah.

Q. Was it as effective a competitor in the Chamblee area of DeKalb County as it was in the Decatur area of DeKalb County? A. No, it was not as effective.

Q. Did you find that, say, C&S Bank of Chamblee was as effective a competitor in the city limits of Decatur? **[421]** A. No, it was not.

Q. As a matter of fact, C&S Emory was between you and Chamblee; was it not? A. That's right, Fulton National and a few others.

Q. Yes, sir. Now, while you were at Decatur, did you compete against C&S Emory? A. Yes, I did.

Q. Did you compete against them the same way you competed against C&S National? A. Yes.

Q. Did you compete against C&S Chamblee the same way you competed against C&S Emory? A. Yes.

Q. Do you believe that there would be any difference in your competition then if C&S Chamblee became a branch of C&S Emory? A. I do not think there would be any difference in the amount of competition.

Q. Now, part of the ability of a small bank to compete depends on the availability of capital for expansion, does it not? A. (Nodding affirmatively.) Well, wait a minute now, ability to compete, you mean for loans?

Q. Well, let me come at it this way. The initial **[422]** purchase of the majority interest of the stock in your bank by you, you subsequently redistribute it to your friends, people you knew; is that right? A. Right, that is right.

Q. And you didn't have any trouble selling the stock, did you? A. Had no trouble at all, and I did not sell it all.

Q. Yes, sir, you now have about ten percent of it? A. Fifteen percent.

Q. And right now today, you are the person who is running your bank, aren't you? A. This is right.

Q. And is it your opinion that what counts in the management of a bank is how well that management manages it? A. That is right.

Q. And in your situation right now, do you believe that if you didn't own any stock in your bank, you would be running the bank because of your management of it? A. I would hope so.

Q. Yes, sir. Mr. Woolsey, you are presently an officer of the Independent Bankers Association of **[423]** Georgia? A. Yes, I am.

Q. And you are aware of the fact that the Independent Bankers Association brought a suit against the State Superintendent of Banks and the C&S Bank in the Superior Court of DeKalb County? A. Yes, I am.

Mr. Doyle: All right, sir. Those are all the questions.

Mr. Lehman: May we have a moment, Your Honor?

[424] The Court: Where is your bank located?

A. South Central Avenue, just two blocks from the Fulton National Bank. We are the only bank in the city limits.

The Court: You have only one bank?

The Witness: We have a branch over at the International Plaza which is a short distance from the airport, just off Virginia Avenue.

Redirect Examination

By Mr. Lehman

Q. Just a few short questions, Mr. Woolsey. These various services that Mr. Doyle mentioned that you indicated you were not receiving, such as periodic credit audits, furnishing tem-

porary personnel, operating guides, why don't you receive these? A. Because I don't think we need them.

Q. If you needed them, could you get them? A. Yes, I think we could get them.

Q. Now, while you were at Decatur, did you compete differently against those C&S Banks located close to you than you did any other bank located close to you? A. Yes.

Q. Do you compete differently against any other C&S Bank now than you do other banks? **[425]** A. No.

The Court: You may step down.

Mr. Sims: Plaintiff calls Dr. Samuel Skogstad.

Whereupon,

SAMUEL L. SKOGSTAD,

was called as a witness, by and on behalf of the Government, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Sims

Q. Would you state your full name, please? A. My name is Samuel L. Skogstad.

Q. Dr. Skogstad, I'm going to show you two documents which the plaintiff has marked Plaintiff's Exhibits 104 and 105. Can you identify those documents? A. Yes, those are affidavits I prepared at the request of the plaintiff.

Q. Do you have copies of those documents up there with you? A. I have, yes.

Q. Referring to the first document, No. 104, titled, "Affidavit of Dr. Samuel L. Skogstad," does this document contain your analyses and conclusions as to the appropriate geographic area

in which to analyze the **[462]** competitive effects of the proposed merger which are the subject of this litigation? A. Yes, it does.

Q. Does the second document reflect, 105, the second affidavit of Dr. Samuel L. Skogstad, does the second affidavit contain your assessment of economic reports submitted by defendant? A. Yes.

Mr. Sims: Your Honor, these documents which we have marked 104 and 105, plaintiff's exhibits, have been submitted to the Court per our understanding of the direct testimony of plaintiff's economic expert. We now leave him open for cross-examination.

Cross-Examination

By Mr. Doyle

Q. Dr. Skogstad, I'd like to begin by asking you a few questions which relate to general positions regarding the issue of branch banking and independent unit banking, since these are germane to the views you express here.

Do you agree that most economists subscribe to the position that principal consequences of anti-branching laws at this point in American history are to restrain bank competition below the optimum level and hinder the free flow of resources in response to market forces? **[427]** A. I'm afraid I could not agree with that statement that those ecoonmists have conducted a survey. I've seen some literature, recently in which conclusions to the contrary are reached.

Q. Would you agree with that statement or not, sir? A. Would you repeat the statement? It's a little broad.

Q. The principle consequences of anti-branching laws at this point in American history are to restrain bank competition below the optimum level and hinder the free flow of resources in response to signals sent out by market forces? A. That seems like a reasonable statement, yes, sir.

Q. You agree with that? A. Yes.

Q. Could you further agree that both theory and statistical data give economists a bias in favor of branch banking? A. That would certainly be a true statement of my view.

Q. All right. Isn't it true that unit banks have insufficiencies in allocating funds to areas of heavy loan demands from deposit supply areas? A. I'm afraid I couldn't confirm that. That's **[428]** an empirical declaration I'd be reticient to confirm.

Q. Do you accept the hypothesis that cost savings or economies of size can be realized by larger banks after some relatively high level of output is reached? A. That's a question that has been investigated rather extensively in literature recently. The most recent results, I would say, raised some question as to the validity of that statement. However, again, it's an empirical question. You'd be trying to ascertain veracity for years into the future.

Q. You have no position on it at this point; is that correct, one way or the other? A. No, I have seen evidence on both sides in recent years.

Q. Do you regard that the recent change in the Georgia branch banking laws as to county-wide branch banking is pro-competitive or anti-competitive? A. I consider the recent change procompetitive.

Q. And the location of numerous branches by downtown Atlanta banks in suburban and DeKalb-Fulton counties as being pro-competitive? A. Yes, generally, yes.

Q. Now you state in your affidavit, your second affidavit that it is not within your competence to assess the past or present relationships among the various banks. By that **[429]** I assume you mean the defendant banks? A. Defendant banks, or any other banks in this **[430]** area or any other area.

Q. Do you include the defendant banks within that statement? A. Yes, I do.

Q. Now, you say you're only asked by the plaintiff to determine what geographic areas would be appropriate within which to analyze the competitive effect of the proposed merger? A. I'm sorry. Is that a quote? You're quoting there. I don't remember that as an exact quote.

Q. You were asked by plaintiff to determine what geographic areas would be appropriate within which to analyze the competitive effects of the proposed merger? A. Yes, I was asked to do that.

Q. Tell me yes or no, did you determine that there would be a competitive effect from the proposed merger? A. That there would be a competitive effect?

Q. Yes or no, did you determine that there would be a competitive effect? A. I determined that it was likely that there would be.

Q. Yes or no, Doctor, did you determine that there would be a competitive effect from the proposed mergers? **[431]** A. I believe that——

Q. Yes or no, Doctor, did you determine that there would be a competitive effect from the proposed mergers?

The Court: Doctor, you can explain your answer.

The Witness: Must I say yes or no?

The Court: Well, on page two of your first affidavit at the beginning of the first full paragraph, you say that was what you were hired to do and then he is asking you, did you or didn't you. Then, you can explain to any extent you want to.

By Mr. Doyle

Q. I think I'm entitled to a yes or no before he explains; am I not?

The Court: You are entitled to it. I don't know how much value a yes or no has.

The Witness: Yes, it's my judgment that there are competitive implications of the proposed mergers.

The Court: Now, explain to your heart's content.

The Witness: I am willing to go with that.

By Mr. Doyle

Q. Doctor, I want to ask you about competition **[432]** between banks in terms of the products or services that are offered by banks. First off, would you agree that there are various theories about the market for commercial banks, for instance, Hodgman, are you familiar with his theory, Hodgman, he argues for a composite market in which the basic product is safekeeping and transferring as a means of payment. Are you familiar with that? A. Oh, yes.

Q. On the other hand, there is a theory of banking as a multiple product industry with separate markets for different services; are you familiar with that? A. I am familiar with that. I characterize that as a hypothesis. I think the theory more or less is common in all these approaches.

Q. And this latter theory argues as well that it may be appropriate to group some of the services such as deposit granting services, credit granting services—— A. Right.

Q. ——and that essentially is the kind of analysis used by Clifton Krepts, which you cited in your affidavit; is it not? A. That's right.

Q. In this case you have chosen only the small **[433]** deposit customers to assess the competitive effect of the merger here proposed? A. Yes.

Q. Your testimony on direct, your affidavit, therefore, does not consider at all the effects on banking competition for the large deposit type customers, the large business customers; is that correct? A. That's correct. I did not include any of those data in my study.

Q. And your affidavits simply do not treat at all banking competition in that area? A. That's correct.

Q. The effect of these mergers on banking competition so far as it relates to competition for the large business, then you simply have not treated in your affidavit? A. That's correct. I believe I point out in my first affidavit that I confine my attention to the small demand deposit customers under $1,000.

Q. You chose under $1,000 for the small customers that you were looking to. Would you agree with me that it would be a conservative dividing line between the small regional customer or small localized customer on the one hand and national-regional customer on the other would be deposit accounts in excess of $10,000? **[434]** A. I'm sorry, I don't think I understand the question. Conservative dividing line?

Q. Yes. You say that the small, that the average customer has a very localized competition for banking services; is that correct? A. Yes, localized market, I believe I said.

Q. And on the other hand, the larger customer producing deposits in excess of $100,000, $10,000, the competition for his banking services is much wider; isn't it, with the geographic area? A. Yes.

Q. Would you agree with me that a dividing line which is reasonably conservative one between the customers we are talking about and this other customer, would be a $10,000 account? A. Well——

Q. An account in excess of $10,000? A. I would think that you could probably make more than two classifications and certainly I would think the characteristics of response of customers of $10,000 on the average would be different than those customers below $10,000.

Q. Now, is it true that—it's true, isn't it, that seventy-five percent of all demand deposits in all banks in Fulton and

DeKalb are accounts in excess of **[435]** $10,000? A. I'm not sure of that. That seems like a reasonable estimate.

Q. That figure sounds about right to you. Now, you also say in your second affidavit that unit banks above a certain minimum size which I think you put as about $5 million deposits? A. Yes, now, that's not actually my finding. I'm reporting there what the literature appeared—appears to report.

Q. This is as to how well a bank can manage a small independent bank? A. That's correct. I haven't—I'm sorry. You're talking——

Q. I'm talking now about unit banks above a certain minimum size. A. Yes.

Q. Which, according to your second affidavit you put at $5 million of deposits, if it's well managed, can compete with management of big banks? A. Yes, that's a summary of findings. There's a fairly substantial amount of literature on the subject of cost information for various size banks. I haven't conducted myself empirical research on the economics of scale or relationship between cost and output. Therefore, **[436]** I have to say that this, what you characterize as my statement about the size class is really my summary of the literature on the area.

Q. That's not your statement one way or another? You don't know? A. It's my statement of what the literature has told me, yes.

[437] Q. But, you, as an economist, on your own empirical investigation, don't know that; is that what you are—— A. That's correct.

Q. What you are distinguishing for us? A. I have conducted no studies.

Q. That literature then, well, you in your study have been focusing primarily on the competition for the localized business

of the small customer with accounts under a thousand dollars? A. Yes, that's correct.

Q. Now, don't the limitations imposed by your own analysis necessarily lead to the conclusion that, including large accounts, in excess of $10,000, is irrelevant to a determination of the appropriate concentration ratio, so far as it affects this small customer you defined? A. Appropriate concentration ratios for what purpose?

Q. So far as it affects the small customer. A. Certainly. If you include deposits of customers over $10,000, that wouldn't give you an accurate concentration ratio for customers with deposits under $1,000.

Q. Now, talking about the small localized **[438]** customer, one element of banking competition for that customer is the competition between banks to afford the most convenient banking to that customer; correct? A. That's correct.

Q. Convenience is one of the most significant elements in where a customer chooses to bank, isn't it? A. I believe that is a very significant element, yes.

Q. And the most significant element for convenience in banking is the geographic location where the banking office is physically set, right? A. Its location and its parking facilities, whether it does or does not have drive-in window; its hours of operation in some locations are very important.

Q. Presence or absence of twenty-four hour banking? A. That could possibly be a convenience factor in areas where that is important to the customers.

Q. Do you know of any non-C&S Bank in the Atlanta area, however defined, that does have twenty-four hour banking? A. I do not know. I didn't even know, in fact, that C&S had it.

Q. I see. Is it fair to conclude, Doctor, that the basis and the expertise which you bring to these **[439]** affidavits is that of an economist as opposed to a bank consultant? A. I am not sure

what the distinction is. I am sorry; I am not trying to pick nits, but I don't know the distinction between the economist who is a non-bank consultant and an economist who is a bank consultant. An economist, I am an economist, yes.

Q. All right. Another factor beyond the convenience factor that goes into the competition between banks is the personal equation, isn't it? A. The personal equation?

Q. Yes, sir, that is the very personal nature of the banker-customer relationship. A. I can testify about my own experience. That is certainly important to me, and I would presume that is important to other bank customers as well.

Q. But you don't presume to testify on any basis of expertise as to the importance in bank competition of that personal relationship between the banker and the customer? A. Well, the bankers that I have discussed this with tell me that this is important, and so I have that view from the banker's side. Then, from my own side, I recognize that as important. So, I consider it a reason, a very plausible hypothesis.

[440] Q. And you are testifying on that now as a basis of an individual who has dealt with bankers or as an expert? A. Well, both as an individual——

Q. All right, sir. A. ——who has dealt with banks, who has a banking account, and as an economist who has interviewed bankers and as an individual that has had conversation with bankers and who has a number of friends in the banking business.

Q. I see. So, based on that basis, you are not surprised to find that a good banker who moves from one location to another will have many customers who will follow him, even if it requires them to drive past two or three banks to get—stay with him. A. I would expect some customers to follow some bankers as they move from one office to another.

Q. All right, sir. Don't you also find that different banks have different loan policies? Have you noticed that? A. Different loan policies?

Q. Yes, sir, have you determined that in your discussions with bankers? For instance, one will gravitate heavily to consumer lending, and another will place greater emphasis on business lending. **[441]** A. Oh, yes, yes.

Q. Banks also compete in terms of the public image they advertise and project; is that not correct? A. I think that advertising is certainly part of their competitive strategy.

Q. Right. And some banks work to establish a very local image? A. Yes, I believe there is some specific advertising aimed at that.

Q. The front-yard bank? A. Right.

Q. Other banks tend to emphasize stability or solidity, safety? A. I think all banks advertise, for example, that they are members of the F.D.I.C., which is, I presume——

Q. Right. And banks generally try to create or differentiate their images in their advertising; do they not, as part of their competitive strategy? A. I am sorry, I really can't—to differentiate there their image?

Q. The front-yard bank on the one hand, or the big bank on the other hand, that sort of thing. Have you observed that? A. Well, I have heard a number of advertisements for banks. I hadn't really thought about that.

[442] Q. You hadn't thought about that in terms of competition between banks or as an element? A. No, I think that the location of the banking office probably is the most important element of the determination in the type of customers that bank sought.

Q. Now, banks also compete with each other in terms of the products and services they offer, so that in addition to what you

might expect as the normal range of services for a small customer, you will find one bank has credit cards, another bank will offer loans against the credit card, and that sort of thing? A. Yes.

Q. Banks compete as to their products. Now, we have identified significant areas and elements where banks compete in offering convenience in products or services that they offer, and the kinds of people who work in the bank to supply that personal equation and the kinds of loan policies of the bank in the creation and advertising of an image or identification of the bank; right? A. Yes.

Q. And these are all essential ingredients of competition between banks? A. They are certainly—they seem a very reasonable list; I am sure there are others as well.

[443] Q. Yes, sir. Now, in your affidavit and earlier in your direct testimony, you said it is not within your competence to assess the nature of the past or present relationships among the various C&S Banks? A. Yes, that's right.

Q. So, you, therefore, have failed to consider whether or not the defendant banks compete against each other as to all of these essential ingredients of competition we have just discussed; isn't that right? A. Now, what I—I am sorry. Would you repeat that?

Q. Yes, sir. You have failed to consider whether or not the defendant C&S Banks compete against each other with regard to each and every one of these essential elements of competition we have just discussed; isn't that right? A. I have not examined the advertising of each C&S banking office. Is that part of the question?

Q. You told us—— A. The advertising——

Q. You told us that you had not examined the relationships among the banks? A. That's correct.

Q. So, as to all of these things that we have just talked about, you haven't examined the relationships [444] among them as to the various C&S Banks, have you? A. No, the relationship as I—my intention there was simply to disclaim any expertise in understanding of the way that management has moved between one bank and another, the extent of control that may or may not be exercised between one bank or another, the extent to which the management of one banking office meets with management of another banking office to discuss policies. Those are the managerial-level relationships that I feel that I indicated in that testimony that I couldn't evaluate.

Q. Well, as to all of the factors we have just discussed, did you or did you not determine that the defendant C&S Banks compete as to those things? A. I collected no data on the relative advertising campaigns.

Q. No, I mean all of the factors we have been talking about as ingredients of competition. You did not evaluate whether or not these banks compete against each other with regard to these elements, did you? A. I did not collect any data on those elements.

Q. Don't you believe that those elements of competition are relevant to this case? A. I would say marginally, if at all.

Q. Were you told not to study them? [445] A. No.

Q. Okay. A. It didn't occur to me to study them, as a matter of fact.

Q. Well, how can you determine a competitive effect of a merger if you have not considered the actual relationships among the parties to the merger as they exist before the merger, and also the relationships they have with their customers? A. Well, as an economist——

Mr. Sims: Your Honor, if I might, I think that the cross-examination of even an expert witness is limited to a certain extent by the scope of the direct.

The Court: I will sustain the objection to that. I think the witness has told you what he hasn't done.

Q. All right, sir. Let me ask you this, Doctor. Did you assume that the defendant banks were, for competitive purposes, all separate unit banks? A. Separate unit banks? I did not assume that, no.

Q. All right, sir. Did you conduct any survey of bank customers? A. I did not.

[446] Q. Are you aware of any survey of bank customers, other than has been attended to—made part of the defendants' economic report? A. I am aware that there have been such surveys made.

Q. Are you aware of any surveys that are being made of bank customers in connection with this lawsuit, are being made or have been made, other than the Baxter Survey? A. A customer survey, not to my knowledge.

Q. All right, sir. You are not—you don't have any knowledge of any survey of bank customers being made in connection with issues in this lawsuit? A. I haven't—no, other than the one that is here in the——

Q. Right, in the—— A. In the economic report.

Q. Yes, sir. Okay.

Doctor, in your first affidavit, if you would turn to Page 12, Table 3, would you tell us how you arrived at the figures contained in the first column? A. Yeah, I believe, I believe that that is explained in the text, if I am not mistaken. It was done by multiplying—we picked some data for DeKalb and Fulton Counties, and found that for the people **[447]** reported in the census who work and live in DeKalb and Fulton Counties, that for each such person there were 0.93 small checking accounts in DeKalb and Fulton County banking offices. Now, I took that .93——

[448] The Court: Where did you get the .93?

The Witness: Calculated by the census report gives us the number of people who work in DeKalb and Fulton Counties, and we have, from the data submitted by the bank, by the banks the total number of small checking accounts with known zip code addresses. So, I divided the number by locations, that is, so we divide the number of accounts in Fulton and DeKalb Counties' banking offices by the number of people who work and live in Fulton and DeKalb Counties. That is the ratio that gives you .93 accounts per person, per person in that category.

Now, that is used as the norm. If it is a norm, if that is a correct norm, then we can multiply the people, the number of people who work in these peripheral counties, Clayton, Cobb and Gwinnett Counties by .93 per person. That gives us an estimate of the number of accounts there are that originate in these counties.

Q. That gives you an estimate of all the total, the total accounts that originate in those counties? A. That's right.

Q. Yes. Now, first, in that base figure that you were telling us about, you included those people who lived in Fulton or DeKalb County but who work outside of **[449]** those counties in the rest of the five-county areas; did you not? A. I believe that's correct.

Q. You talked about people who both reside and work in Fulton and DeKalb Counties? A. I believe that's right.

Q. All right. Now, if you included those Fulton-DeKalb residents who work in other parts of the metropolitan Atlanta, this would have increased the size of the labor force which you considered as a base; wouldn't it? A. If I included more people, yes.

Q. That, therefore, would have decreased the ratio which you came to as .93? A. That's correct.

Q. Now the people who are living in Fulton-DeKalb and working in Cobb, Clayton, Gwinnett are all commuting; are they not? A. Yes.

Q. By definition, and their commutation to outlying counties in fact increase an inter-action of customers between Fulton, DeKalb on one hand and Cobb, Clayton on the other? A. Presumably they go outside of the county.

Q. Increases the inter-action on the customer side of your market; does it not? **[450]** A. It may have.

Q. Don't you agree that commutation is affected which increases inter-action between what might or otherwise be a separate market? A. Yes, I think so. I think the direction of the commutation is important. I think people who live in DeKalb and go out into Gwinnett, people residing in DeKalb County and travelling salesmen would be less likely to bank away because of the commuting than would people who live in DeKalb and come into Atlanta each day.

Q. Would you verify this on the basis of the census data? A. Census data?

Q. Yes. A. The travelling salesman in question, no.

Q. You didn't find that impression in census data? A. No, census data don't have banking accounts data.

Q. Essentially, what you have done is applied a base in Fulton-DeKalb which includes commuters to the labor force which is heavily influenced by commutation; isn't that correct? A. I'm sorry. Labor force?

Q. Yes, the people who live in Fulton-DeKalb Counties but who work in the outlying five counties **[451]** constitute twenty-two percent of the people employed in those counties; don't they? A. I doubt it. That may be correct. I'm sorry, I don't have the data in front of me. I doubt twenty-two percent of the Fulton-DeKalb County residents work outside of those counties.

Q. No, constitute twenty-two percent of the work force in those two counties. A. Yes.

Q. Isn't it, that fairly significant percentage of employed population to banks that are located in those two counties? A. It may very well be.

Now, it's very difficult to make a judgment on the basis of these percentages only, for example, because if we know how many people are in the affected counties and how many people moving there, to think that constitutes a better basis for making a judgment.

Q. Right. As a matter of fact, the census data, the figures used in column one come from the 1970 census; don't they? A. Column one of table three?

Q. Yes, the census data which is a basis for that? A. Yes.

[452] Q. The subpoenaed information you used to count the total number of small accounts is 1972 information? A. Yes.

Q. And from that, two and a half year time from the census to the subpoenaed information, you have witnessed an enormous out-migration? A. Out-migration from where?

Q. Fulton-DeKalb to Cobb, Gwinnett, Clayton and Gwinnett. A. Certainly, I don't believe I have any data on that growth question.

Q. You are not familiar with the census data from 1960 to 1970 showing out-migration from Atlanta? A. From the City of Atlanta?

Q. Yes. A. That's different. It's a different matter from DeKalb and Fulton. Most of the out-migration is going out to DeKalb County. I'd say it's a rather small proportion who leave the City of Atlanta and go outside of Fulton and DeKalb. You can go up to Northeastern Fulton, that's a heavy growth area. There is a growth, I'm sure, into Cobb County as well. There's a considerable growth in Northeastern corner up here into DeKalb County.

Q. Beyond DeKalb? A. I'm certain that there's growth beyond DeKalb. **[453]** I don't mean to suggest there is no growth outside the two counties.

Q. The northwest quarter out the Northwest Expressway into Cobb County? A. Yes.

Q. Down the Expressway into Clayton is the fastest growing county in the state? A. Very rapidly. I believe the Clayton County population has doubled, as a matter of fact.

Q. The figure you use based on the zip code information assumed the county of origin is in every instance the county of residence; do they not? A. No, the county to which—the zip code data show the zip code to which the account statement is mailed each month.

Q. You're assuming—your impression of your table three column two, is that the county of origin is the county of residence; aren't you? A. I assume that is almost, that's generally the case.

Q. There are a lot of people who have statements mailed to their business address or some other address; aren't there? A. I have no idea whether there are a lot in percentage terms or not. I'm not sure of those. However, I **[454]** think they would be of marginal significance.

Q. Now, Doctor, what you did to determine how many business accounts there were, now what you did was to take the zip code reports——

Mr. Sims: I wonder if there is any way to set that up so we could all take a look at it.

Q. Now, what you were trying to do, Doctor, in table three was to show the number of zip codes that originated in Clayton, Cobb and Gwinnett Counties that were in Fulton-DeKalb banks and offices? A. The number of checking accounts, small checking accounts.

Q. So, what you did, you took the zip codes for that report. the zip codes and then calculated how many of them there were? A. That's correct.

Q. By each particular zip code. Now, I want to ask you. Doctor, did you do any work yourself or did you have it done or did you direct it to be done? A. I directed most of it.

Q. All right, sir. Now, let me show you, starting with this zip code, sir, 30354, did you allocate this part of it to Clayton County and this part of it to Fulton County, or did you report all of that zip code as being in Fulton? **[455]** A. Let's see. There are eighty-seven zip codes. I just can't remember off-hand. I believe there are exhibits with our worksheets that would——

Q. Would you accept my statement—would you accept my statement, then, that as to this part of the zip code which is in Clayton County, you allocated it into Fulton County? A. I don't have it in front of me. If you say it's true, I'm certain it is.

Q. All right. Would you agree with me, generally, that as to all of the zip codes that are on the boundaries—I wouldn't go down the list—of Fulton and DeKalb, where it's split by the county line, it was always allocated into Fulton and DeKalb? A. Went one way or the other. None of them were split.

Q. They all went in? A. They all went in, yes.

Q. So, therefore, what you have done is by putting all of these areas into Fulton-DeKalb Counties in your split zip, your allocation of split zip codes, you expanded them into what most of us know as Cobb, Gwinnett, Henry and the rest? A. Yes.

Q. We have done that to show how much bigger the **[456]** counties are in geography, how much bigger they are in zip code allocation. I want you to take a look at it and ask if you agree those are areas you have now included within? A. What is the question—does it enlarge the counties?

Q. Do you agree that those areas you have now are included within Fulton-DeKalb.

The Court: He has testified he has included all split ones in the county which gives it the inevitable result, of what you say.

Q. Do you know how many actual bank accounts come from those areas? A. Again, I don't have the data in front of me.

Q. Would you agree with me—— A. I think they entered those as exhibits.

Q. Would you agree with me that on the basis of three hundred and thirty and some-odd thousand accounts—that's a round figure—that fifty-one thousand accounts originate in those split zip codes; does that sound reasonable? A. I can't testify to factual data when I don't have the facts in front of me.

Q. Does that sound reasonable? A. I really don't have any feeling whether it is or not.

[457] Q. Okay. Would you expect from your knowledge of the area that folks who are living in those areas closest to Fulton and DeKalb are more likely to be commuters into Fulton-DeKalb than people living on the farther out regions of those counties? A. That seems reasonable. I'd have to say it's speculation on my part.

[458] Q. All right. Would it also sound reasonable to you, therefore, that by allocating all of those people into Fulton and DeKalb County rather than counting them where they were, that you have discounted significantly the influence of Atlanta banking alternatives on residents of those metropolitan counties, Fulton, Cobb—— A. Oh, no, I would not agree with that at all.

Q. You would not? A. No, I don't.

Q. Those people are, in fact, banking in Fulton and DeKalb banks, are they not, because that is where you got the

subpoena information? A. There are some people who reside there who bank in Fulton and DeKalb banks, yes, certainly.

Q. As a matter of fact, all of these 51,000 bank in Fulton and DeKalb banks because that is where you got the subpoena, right? A. That's correct, yes. There are also, presumably, other people there who don't bank in Fulton and DeKalb banks.

Q. I understand, but I am talking about the figures you put in your table. So, therefore, by allocating the amount you have discounted significantly the effect of Fulton and DeKalb on those counties. A. No, see, I won't go to that conclusion. I **[459]** will agree with you that I have increased the size of Fulton and DeKalb banks, since those are less populous counties, that that removes what would be percentage-wise a more important proportion of the peripheral county populations than that percentage would be to Fulton and DeKalb. However, that does not imply to me that banking markets in Gwinnett County are grossly miscalculated because of that inclusion, because——

Q. Certainly, at least 50,000 people, they are now living out and banking in, right, if you allocate them in the other direction from the way you allocated them, certainly as to those—— A. Certinly, those people come into Fulton and DeKalb, and I am sure that Gwinnett County banks, for example, would like to have those customers.

Q. All right, sir. Now, you have told us that the customer that you are talking about is a localized kind of customer, and what I want to find out is whether or not you investigated the significance of the five-county originating customer to those banks located in the suburban parts of Fulton and DeKalb closest to that county. A. In those banking offices, no; however, that, again, is information that can be taken from the exhibits that——

[460] Q. But you didn't investigate that. A. Investigate it? Yes, I have looked at all of those exhibits and—I am not sure——

Q. All right, sir. Now, again, on the Table 3, what you are using is all of the banks in Fulton and DeKalb Counties as a base to determine the importance of, say, Cobb County residents to them, correct? A. Yes.

Q. Now, if you looked at the relationship of people living in the outlying part of DeKalb County to all banks in Fulton and DeKalb County, wouldn't you expect to find the same insignificance of relationship? A. If I consider, for example, Lithonia banking customers as a percentage of all DeKalb County.

Q. Fulton and DeKalb. A. Oh, yes, I would consider those. I would expect those to be a very, very small percentage.

Q. And, again, you can take them one by one, Tucker? A. Yes.

Q. Chamblee, Sandy Springs. A. Well, there is a——

Q. Relatively insignificant to all Fulton County banks each, one by one? A. Well, I wouldn't—no, I wouldn't draw the **[461]** analogy that Lithonia is to DeKalb as Chamblee is to DeKalb. Because Lithonia is separated by considerable distance, and so the distinction there is, I think, meaningful, see. I think that the direction in which we are going is one in which we could say is any city block the supplier of a significant portion of a given bank's customers, and the answer, of course, would be no. Then, if we added up every—if we said that for every city block we would say there are no significant customers, that wouldn't be a very sensible conclusion.

Q. Yes, sir. And as you have done, you have taken Cobb County customers against all of everybody in Fulton and DeKalb. A. Yeah, right.

Q. Just like the city block you were telling me. A. Not like the city block.

Q. Except Cobb County instead of the block. A. No, you see, if you live in Marietta, your relationship to Atlanta, to Five Points, for example, is appreciably different from what your relationship to Five Points would be if you live in Ansley Park.

Q. But, it is a little bit closer actually than Sandy Springs, isn't it? A. It may be; I am not sure of that.

Q. You say there are banks in Cobb, Clayton and **[462]** Gwinnett who would tend to respond only to changes made by large downtown Atlanta banks, right? A. That's—yes.

Q. Aren't there banks in outlying parts of Fulton and DeKalb County who would tend to have the same response? A. I rather doubt that, who would respond only to the downtown banks?

Q. Uh-huh. A. I can't—I doubt that really.

Q. Don't the same reasons that argue for the exclusion of Cobb, Clayton and Gwinnett argue for the exclusion of the suburban parts of Fulton and DeKalb? A. Exclusion from what, now? From the definition of a banking market?

Q. Uh-huh. A. No, certainly not. Because, you see, a market has to be thought of in terms of all of the sellers and all of the buyers who determine terms of exchange and conditions of exchange. Now, if you live out in Gwinnett County, you will never have the option under existing law, for example, of banking at a bank near your residence that is a branch of an Atlanta bank. However, if you live any place in Fulton County or any place in DeKalb County and you are operating a bank, **[463]** whether it is North Fulton or South Fulton, there's always the potential, the possibility of having a branch of another bank come out there and compete with you.

Q. So, is that then—— A. So the relationship is quite different.

Q. So that, then, is the significant factor which you use in separating them? A. Not "the", certainly, but I considered that significant.

Q. It is the one you come to first? A. Well, it is the one you raised; I wouldn't say it is the one I come to first. But, I would say it is a significant factor in my judgment.

Q. You would say that in statewide banking, that the relative market was statewide? A. I haven't conducted a study on that, but it seems plausible that that case could be made, yes.

Q. Now, you talked about a market being a place where both sellers and customers both originate. Did you investigate, say, in the North Fulton market, to see where the customers of the banks located as you defined the North Fulton market, see where the customers actually came from? A. Did I examine the data to see where the customers came from?

[464] Q. Yes, sir. A. Yes.

Q. You determined, then, if you made that examination, that 36% of these customers that you are talking about came from areas totally without the area you defined? Does that sound reasonable to you? A. Yes, if you say it again, I accept it.

Q. All right, sir. And in addition to that, there are customers in the split zip-code area which account for 47%; you account for that? A. In split zip code, split out?

Q. Split by county line, split outside of the area you defined, so you found that there are 47%—— A. I'm sorry.

Q. ——who come from zip codes which split the market which you define; you defined a market which you said was the North Fulton market. Actually, you found two markets up there, didn't you? A. I don't believe that I said—I don't believe

I defined a specific market. What I am saying is that I don't think I drew any razor lines as boundaries on any market. All right. I don't believe in such lines and I don't think they can be drawn, so I——

Q. If we take the North Fulton market as being that part of Fulton County north of 285, which is, I **[465]** think, what you put in your affidavit. A. Okay.

Q. Do you agree with me that 36% of the customers of the banks located in that area come from totally without that area? A. Its entirety?

Q. All right, sir. A. Again, I don't have the data in front of me, but if you found that in my report, I am sure you report it accurately.

Q. And another 47% come from areas which are partially within and partially without. A. That may also be the case.

Q. Those two added together total 83%. A. Well, 47%, what does the 83% mean, though? You see, you said 47% come from areas that are partly in and partly out.

Q. Uh-huh, and you allocated them all in. A. But of the 47%, how many were in and how many were not?

Q. You didn't tell us, and I can't either. A. Well——

Q. You arbitrarily allocated them in, didn't you? A. Yeah, I presume it isn't important.

Q. All right, sir. Now, is it possible, when you **[466]** are considering the zip code origin of an account that is reported by the branch of a major banking system, that that zip code origin has nothing at all to do with the actual banking locations that are used by the customer? A. Is that a possibility? Is that your question?

Q. Uh-huh. A. It is a possibility.

Q. And as a matter of fact, a customer who, say, lives in the Ansley Park area and then moves out to Tucker, who earlier had his branch—his account at a branch in the Ansley Park area, could transact on that account out in the Tucker area without ever having to change it or make any difference to him; right? A. I believe that's a possibility, yes.

Q. Now, I think in your second affidavit you turned to—you drew the three circles in terms of defining a market, and you said that even though Bank A here and Bank C here are not competing with each other—— A. No, I don't believe I said that. I believe, even though the customers are actually found to have accounts in those offices, it may be in separate—spatially separated areas.

Q. Okay. So, then we get two circles here, and you suggest that if a branch of another bank is put **[467]** between them, that that is, as I understand it, will serve to transmit the effects from A through B to C. A. That's correct.

Q. Now, the theory of that—— A. Or from B out to A and C.

Q. Correct. The theory of that circular analysis as theory could apply from A being transmitted to C by B, B being transmitted to D by C, and so on to Athens, by theory; correct? A. Correct.

Q. Now, you chose to stop it at the DeKalb County line? A. Yes, sir.

Q. Or Fulton County line. A. I don't believe the circles refer to any county lines at all.

Q. Well, when do you consider that you stop tying together the transmission of effects? A. Well, I think there are various factors that determine the geographic limits of a market, and I think the lines outlining the geographic market cannot be outlined precisely, as I have said before. However, one of the factors, and I don't offer this as the key factor or the only factor,

but certainly one of the factors in determining a market is where the sellers are able to **[468]** locate their offices.

All right. The point here is simply that if there is a law that prohibits one seller from going over into this area to compete for customers, then that is one factor that separates those customers from the competitive advantage they might gain from the banks in the other area.

Q. Now, Doctor, you have told us that the small banking customer is the one most affected by concentration in a banking market; didn't you say that in your affidavit? To consider the performance of the banking market as it relates to that small customer, don't you also have to consider the adequacy of other financial institutions, such as savings and loans and credit unions and the like? A. The adequacy? Not in serving demand deposits, because no other kind of institution serves demand deposits.

Q. So are we to hear your testimony as being limited solely to the service by banks of that one function, demand deposits? A. Not limited solely to it. However, as I indicated in my testimony, I selected demand deposits because that is the one unique, wholly unique, that is one of the wholly unique services that commercial **[469]** banking offers now. Commercial banks, of course, sell more product lines, more services, than just demand deposits. But, the base of customers who have demand accounts in a bank form the principal part of the base of potential customers for various other services sold by the banks. And, so, my attention was confined to these account customers on the presumption that those small checking account customers represent also an important part of the customers for other service lines, other products lines that the bank serves.

[470] Q. So, therefore, you did not consider the effect of concentration on the adequacies of any other financial institutions as to other services; is that right? A. Any others, no, I didn't consider any financial institutions other than commercial banks.

Q. Now, it's true that the concentration insofar as represented by the number of unit banks, concentration as represented by small customers is reflected by the regulatory—— A. Concentration as reflected by regulatory——

Q. The concentration deals with ease of entry, the number of units that are available? A. Yes.

Q. All right, sir. And don't regulatory authorities require approval before you can enter a market? A. Oh, yes, certainly.

Q. You can't enter the banking market unless you get that approval? A. That's correct.

Q. Aren't you aware of a group in DeKalb that, in fact, was denied a charter from the Comptroller? A. I've heard of that.

Q. Hasn't the FDIC established a policy of including the effect on the competition as a critical ingredient of its convenience and needs analysis on **[471]** passing on merger applications? A. I believe that's correct.

Q. And now, the regulatory concern simply reflects the fact there are other factors to be considered besides concentration, such as need or adequacy of management or solvency? A. I don't follow that question.

Q. Doesn't this regulatory concern limiting free entry into the market reflect that as to banking as opposed to steel or automobiles, something like that, that there are other public concerns such as bank solvency, adequacy of management and the like? A. There is a long history, of course, of regulations of the banking industry. I think it would probably be presumptious of me to say what the makers of the law that restrict entry officially had in mind when they did that. However, I would not—I think that there were probably some errors in judgment at the time the law was passed. I'm not sure that the presence of those laws restricting entry are that, indicates

that each of those laws in fact serve an important and correct purpose.

Q. All right, sir. You are not sure you agree with the law, but you agree that the law is the law? A. The law is the law.

Q. Okay. When were you first retained by the **[472]** Government in this case, Doctor? A. I believe July 1st.

Q. And that was after the complaint was filed November of last year? A. That's correct.

Q. Now, these markets which you have located for us in your affidavits, you simply have verified what the Government alleged in its complaint; haven't you? A. Not precisely, no.

Q. Except in one instance, that's where you found two markets in north Fulton County? A. I believe there are more instances. I believe that the complaint alleges—draws some very hard lines identifying markets. For example, the complaint alleges that Fulton County is a market. That DeKalb County is a market. As I pointed out in my first affidavit, I think that DeKalb County is probably too large to constitute a banking market. The reason I believe that is that there are areas in DeKalb such as Lithonia that should not probably be considered a part of the metropolitan Atlanta, downtown Atlanta banking market. I think the Peoples Bank of Lithonia serves a different market. I think that it should not, that part of the county should not probably be included in a rigorous definition of the market.

I believe there are also probably some eastern, **[473]** some areas of the eastern boundaries of the county that should not probably be included in that market.

Q. Would you include Tucker in that? A. No, I would not.

Q. You would not. A. However, in terms of the present case, it seems to me that when you took those parts of the county out of the market, what you did, is remove a part of the county in which the C&S Banks have very little interest

in which they have relatively few customers and in which the banks and most of the customers in that part of the county are in relatively localized banks. If you remove that part of the county, re-define the market as the smaller part and recalculate the concentration ratios, you will find higher concentration ratios than you found when you put that part of the county in. I think my conclusion that DeKalb County is not an unreasonable delineation of the market must be considered in terms of the purpose for which the research was undertaken in the first place.

Q. And so, in your determination that DeKalb County is not an unreasonable delineation of the market—— A. It must be considered in terms of the purpose for which the research was undertaken in the first place.

Q. And so, in your determination that DeKalb County is not an unreasonable delineation of the banking **[474]** market you affirmed what was alleged in the complaint; didn't you? A. No, I didn't. I believe the complaint calls DeKalb County a market. I didn't reach exactly that conclusion at all.

Q. You found two markets in north Fulton County; is that correct? A. I believe that there is at least one market in north Fulton County that can be separated from the Fulton County area. There is up in the section that is roughly in the northern tip of Fulton County, there are a couple of banks, several banking offices that are found to have captured or to serve most of the customers who reside in that area. You can come down farther and find a similar pattern.

Q. And you stated at the present time it appears that the north Fulton area contains two reasonable promulgations of the banking markets? A. It may, yes.

Q. On the last page of your first affidavit? A. Yes.

Q. All right, sir. You determined that by doing an analysis of the zip code of the banks? A. Yes.

Q. Did you do the same analysis of the zip code [475] origination in the DeKalb area? A. No, I didn't.

Q. Did you make the same analysis that you did in Fulton in South DeKalb? A. No.

Q. In the Chamblee area? A. No.

Mr. Doyle: I have no further questions.

Mr. Sims: I wonder if we might recess at this time?

The Court: Is your redirect lengthy?

Mr. Sims: I am not exactly sure. I would like to take a short break before we got onto it.

Mr. Hodgson: We intend to start our case as soon as we can. We'd like to start as soon after lunch as we can.

The Court: Do you really have questions as to whether you are going to have redirect?

Mr. Sims: Yes.

The Court: All right, we'll recess until 1:45.

(Whereupon, court was adjourned at 12:45 o'clock to reconvene at 1:45 o'clock P. M. the same day.)

[476] (Whereupon the proceedings resumed at 1:45 o'clock, p.m.)

Redirect Examination

Mr. Sims: Your Honor, we just have a few very short questions on redirect.

By Mr. Sims

Q. Professor Skogstad, Mr. Doyle asked if you had simply affirmed the market allegations that were in the complaint that was filed in this case. I believe that you answered no to that question. Have you ever testified for the government in a bank merger case before? A. No, I have not.

Q. What instructions, if any, were you given when you were retained by the Government in this case? A. Well, when the contact was made, I was asked if—I was asked to conduct a study to determine what the relevant geographic limits of the markets in which the effects of this merger would be.

Q. All right. Did you place any conditions on your employment by the Government? A. Well, we had preliminary discussions before we reached an agreement, and the only condition I placed was that I would guarantee no conclusions at all; without looking at the date I wouldn't have any way of making any reasonable determination of what the **[477]** geographic limit of the market was.

Q. And did you have any preconceived notions or opinions as to the geographic areas involved before you analyzed the data? A. No, I thought it would be—the market would be smaller than a whole state and larger than the head of a pin.

Q. Mr. Doyle also asked you whether or not you agreed with the statement that 75% of the deposits in Atlanta banks were in accounts over $10,000. I believe you said that that sounded reasonable. A. Yes, that's right.

[479] Q. Had you considered a percentage based on the number of accounts rather than percentage based on dollar amounts, would you still agree with that statement? A. Oh, no. Of course, that would fall very substantially. Probably—well, I don't know. I would think maybe twenty percent of the customers would be in that size class, thirty-something, like that.

Q. This is based on the number of accounts? A. Yes.

Q. You were also asked whether or not you had done an analyses in areas of DeKalb County, I believe, Tucker and Lithonia, some others were mentioned similar to the analysis that you did in Fulton County. A. Yes.

Q. Now, you said you had not—did you in fact do any analyses of the relationship between banks in DeKalb County, inter-action between banks in DeKalb County? A. Yes.

Q. What did this analysis reveal? A. Well——

Q. Excuse me, are you looking at something there? A. Yes, I have a table here that I prepared for the purpose of gaining an impression of the way that banks within a county might be related throughout the county. **[480]** Now, the purpose of this was not to draw any specific lines or markets, again, because as I have testified—well, I have testified in my direct testimony and here today as well—that I think it's impossible to draw any precise lines around the market, geographic lines around the market that economists would generally accept. I think any two economists would be likely to come up with two markets. I did construct this with the purpose of determining any relationship among major banks or most of the banks in the county and the results are found on this table.

Mr. Sims: Your Honor, at this time we would like to offer this as Plaintiff's Exhibit—I believe the next number is 195.

The Clerk: That's correct.

The Court: All right, I will admit it. Any objections may be noted in the same fashion.

Q. Mr.—Professor Skogstad, would you explain what this chart reveals to you? A. It would be helpful if I could use the zip code map.

Mr. Sims: Would it be all right if Professor Skogstad used the map over here, Your Honor?

The Court: Sure.

The Witness: Well, I notice that this is a Metropolitan Planning Commission zip code map. It's **[481]** not precise, however, I think it's essentially the same map that most plaintiffs

and defendants have used in their analyses, and I think it's essentially faithful to this.

The starting point of this is zip code 30033, which is located here, just east of the Fulton-DeKalb County boundary. This is a zip code address from which C&S Emory draws its largest number of accounts. I believe it is the zip code in which the C&S Emory is located and has its main office located. Part A of this table then shows the small demand deposit accounts again. These are under $1,000 accounts that are drawn from zip code 30033 by C&S Emory, C&S Tucker, C&S DeKalb and C&S National.

Now, in the economic report, a line is drawn through this zip code, in fact, two lines, I believe, separating C&S Emory, C&S Tucker, again separating C&S Emory and C&S DeKalb. What this indicates in that report was that they draw their accounts from different parts of this zip code which I am sure is probably correct. However, the next, under the next heading which is other selected banking offices competing in 30033, I chose from the exhibits that we have submitted just from banks that appear to have a sufficient number of customers from this zip **[482]** code area. So, that these are competing at least for some customers in the zip code area.

Now, you will notice that this has seven banking offices located under part A of this, the table here, and the point is simply that in addition to the C&S Banks, there are other banks drawing from this zip code. This is by no means an exhaustive list of all banking offices that draw from the zip code area. The point is, if a line were drawn between the part of the market for every possible pair of banks, the part of this zip code from which every possible pair of banks draws, you would have patchwork that divided zip code 30033 into a very large number of banking markets. I think those markets could simply be so small as not to be useful in assessing competitive effects.

[483] A. (Continued) Now, when we go down to Part B, we find in—this is Zip Code 30030, which is directly south of Zip

Code 30033; this is the zip code in which Decatur is located. And Decatur and additional banking offices are approximately one mile down Clairmont Road—down Clairmont Road from C&S Emory's main office, located here.

And some of the banks that are important in drawing customers from that zip code are Fulton National's Decatur offices; in fact, they have a motor bank office there as well.

First National's East Ponce de Leon office and First National Bank of Glenwood, and so this repeats two from the list from the "Other Banks" section in Part A, for Zip Code 30033.

So, we have here certainly some interaction between all of the banks or between many of the banks in Parts A and Part B of this table. The point is simply that most of these banks are probably concerned for a significant group of customers in both of these zip codes. Now, from 30030, we go farther south to 300 Zip Code 30032, which is down in the Glenwood area, and Belvedere, I believe, is down in this zip code, or perhaps a little farther south. Again, in this zip code we see that the C&S DeKalb draws a significant number **[484]** of accounts, and C&S South DeKalb draws significant accounts, and C&S Emory has a branch, I believe this is a relatively new branch, down in 30032, and that branch draws over half of all of its DeKalb County accounts from this Zip Code 30032, that branch of Emory does.

Now, Zip Code 30032 is not listed in the defendants' exhibits as one of the zip codes that is included in the market of C&S Emory, and when the entire bank is considered, I can understand how that conclusion was reached; however, to exclude this Emory, this Covington-285 branch of Emory from this zip code seems to me unreasonable, since they draw half of their accounts—over half of their DeKalb accounts from that area.

Now, the additional, the other banks, non-C&S banking offices, that seem to me to be significant down there include, once

again, C&S Glenwood, which we saw was also a competitor, a competitor up in Zip Code 30030, and so the C&S Glenwood Bank clearly competes with some of the banks that compete for customers in Zip Code 3——

The Court: First National of Glenwood?

A. Pardon me, yes. Excuse me, that is First National Bank of Glenwood.

On the next page, Zip Code 30034 is the farthest **[485]** zip code to the south that I have considered, and we find, once again, C&S South DeKalb drawing a sizeable number of customers from that zip code, and the Belvedere office of C&S DeKalb draws about half or a little less than half as many as C&S South DeKalb, but still customers that must be of some consequence to that banking office. And, then we have—C&S National has some customers there also, probably many of whom, if not most of them, customers who commute and go into town and can choose either banks in this zip code or banks, or banks in the city.

Now, South DeKalb, First National South DeKalb's office is clearly of consequence down in that area. First National Bank of Glenwood, once again, has 360 small accounts there. The DeKalb Exchange Bank has, relative to the total zip code supply of accounts, not many, but compared to the size of this relatively small bank, the 231 accounts are of, no doubt, some importance to DeKalb Exchange Bank.

From there, that is as far south as I took the analysis, and I think that is as far south as one would reasonably go in considering what I would call perhaps the metropolitan DeKalb area, the mainstream DeKalb area that economically, and in other ways, integrated with the mainstream Atlanta part of DeKalb, **[486]** DeKalb County.

From there we go back up to 30033 and directly northeast of it Zip Code 30329. This is the zip code in which C&S Park

National has its office. It is also the zip code in which the Toco Hills branch of C&S Emory is located. Economic Report draws a line through this zip code as well, separating it into two parts. One part being the principal supplier of C&S Emory accounts, the other the principal supplier, essentially, of C&S Park National accounts. But, the banks that show up in that zip code as being of consequence include C&S Emory, which I have broken down here into their various offices, three of their offices, because it clearly makes a difference which office you are talking about in considering the importance of that zip code to the C&S, the C&S Emory. Clearly, its the Toco Hills branch that is significant here, and the Toco Hills branch, I might point out, is one and a half miles directly down North Druid Hills Road from Executive Park. So that is the space separating those two banking offices, only one and a half miles. And I believe that a significant number of residents of this area are residents who occupy space a little bit north and a little bit south of North Druid Hills Road, but essentially in that space between Toco Hills and [487] Executive Park. The point is, it is a very short, easy trip from Executive Park down to Toco Hills, and it is only a mile and a half in distance.

Moreover, there are other banks, many other banks that have a significant number of customers from this zip code, and those include Fulton National's Executive Park office. I am not sure of whether the Fulton National printout may have been erroneous in showing only four accounts in there. It may be because that Fulton National office is relatively new, but since it is located in Executive Park, I consider it reasonable to conclude, regardless of the number of accounts that are shown in it, that it competes with other Executive Park banking offices.

Then, First National Bank has, about three-quarters of a mile from Executive Park on Buford Highway, an office that competes significantly in 30329. That is just across the expressway, and a little bit north and northeast on Buford Highway. Here, the Corporate Square office has 442 accounts in that 30329.

And, the Trust Company Executive Park office, of course, also draws from the area, and DeKalb County Bank, which is a little farther north on Buford Highway, also has a significant number of customers from its point of view down in this 30329. **[488]** So again, instead of comparing C&S Banks only in this zip code area in ascertaining the market characteristics of the 30329 zip code, one should, I think, include the offices, all of the offices of banks that compete for those customers. Again, I think it would be unreasonable to criss-cross this with lines and end up with maybe twenty or thirty or ten, however many markets from that relatively small geographic area.

Then, from there we go northeast to 30319. This is one of those zip code areas that straddles the county line. It goes over into Fulton County somewhat on its western border, at least the way it is plotted on this Planning Commission map, that seems to be the case. In Zip Code 30319, C&S Chamblee, C&S Park National, and C&S National all have a relatively large number of accounts in this area. And First National's Corporate Square office continues to draw, and that is reasonable because the Corporate Square office is just here, just across the border from 30319.

[489] And so that's a, clearly a competing office in this area as well.

Trust Company of Georgia, Brookhaven office, draws a very large number of small accounts, 1473 from this area. And so this Brookhaven office of Trust Company, again, it seems to me is clearly one of the competitors for the small banking customers who reside in the 30319 area.

Then, the Executive Park Branch draws a few accounts from there and Peachtree Bank & Trust Company draws 436 accounts. Peachtree is up here in Chamblee and, of course, draws probably from this northern area, 30319. DeKalb County Bank has 334 customers in here which I would consider a number of customers that DeKalb County Bank could

not afford to ignore, therefore, competition among the banking offices in this zip code.

From 19, we go on the chart to 30345, I believe, which is to the right of—to the east of 30319, and directly northeast of 30329. That's directly northeast of Executive Park area. Also Briar—this is Briarcliff Road running through 30345. Park National draws some 161 small account customers from that area. C&S Tucker, LaVista office, is particularly important in that area. They have 450 accounts.

C&S North DeKalb office draws a significant **[490]** number, probably from this northeastern piece of zip code, 30345. C&S National again has customers, probably many of them, some of them at least commuters into downtown Atlanta.

C&S Chamblee has, from the Buford office draws 343 accounts. So, these offices are offices that draw customers from this zip code.

In addition, the DeKalb County Bank is a major factor or a factor in this zip code. The 279 accounts are again significant to it even though they don't represent a major proportion of all the accounts originating in this area.

First National Perimeter Center draws some accounts, probably from an area more or less similar to the area from which C&S, perhaps similar to the area from which Emory, North DeKalb and perhaps the Chamblee Buford Highway office draws as well.

Then, they go from there, 30341, which moves up in the direction toward Chamblee and you find C&S Chamblee certainly is probably the single major supplier of small account services up there with 293 accounts. The main office draws more from that zip code than other offices. But, it's important to both of those offices. C&S Tucker has 376 accounts in this area. Park National, 203, and C&S again comes

in as a major factor. They [491] have 996 small accounts in that zip code area.

In addition, then the DeKalb County Bank is important in 30341 and Peachtree Bank & Trust up on Buford Highway draws many of its customers, most of its customers, apparently, from 30341.

Northeast Commercial Bank, which is also up in the Chamblee area, draws a few, 152 customers from that area. Fulton National Bank, Dunwoody office, has 132 customers in this area.

First National Peachtree Industrial office has 173 customers and again the Trust Company's Brookhaven office has a fairly significant number of customers, significant to that Brookhaven office, in this case, 236 accounts from this area. Trust Company's Executive Park office draws accounts from there, also, and that is as far north as the exhibit takes.

The point of this is not to show an exhaustive listing under these other selected banking office headings, of all the banks drew from this area, simply to show banks other than banks listed in Economic Report that compete, that is, other than the banks listed there in drawing lines to delineate markets, that compete for these customers, and I believe that this interaction ties this entire area more or less together, more, rather than less, ties it together in spite of the fact that when you come up [492] here and look at Peachtree Bank & Trust, for example, you would find them of little significance, I'm sure, no significance, in zip code 30030, for example, or 30032, for example, at the present time.

However, the connection, the interlocking chain that I illustrated with three rings referred to earlier today is what connects that entire area; consequently, whether you have one market here or one, two, three markets, or possibly even four markets here, here the effect of bank market conditions in one of these areas is going to be significant to the customers, the

small bank customers of banks throughout this area as the effect is made and rather quickly throughout this metropolitan part of the county. That concludes this.

Q. Now, you said in your direct testimony, on page 27 of your first affidavit, I'm reading here, therefore, my conclusion is that the counties are reasonable geographic areas within which it's appropriate to analyze the competitive effects of the proposed merger. A. Yes, sir.

Q. Is this the same thing as saying that each is a precise banking market? A. No, that's far from saying that. It simply says that it's difficult to ask, perhaps, if we are honest, we would say it's an impossible task to draw precise geographic **[493]** lines around a market. Any lines that I draw and would show to an economic professor would have something they could argue with. The point is whether we define, for example, the area I just traced through in DeKalb, as many markets or one market, they are related anyway. The competitive effects of banking conditions in this major piece over there will be transmitted down through the rest as if it were one market. It may be one market or it may be several adjacent markets that are completely related economically and simply behave as if they were one market.

Another example can be found in, over in Fulton County where I have indicated that there may be, there may be two markets in north Fulton County. Regardless of whether those are two markets or one market, there is inter-action between the two. The two are related by having an office of one bank, a bank in one part of the northermost part of the county, and having a branch in the lower part of north Fulton County. So that those banks compete with each other.

Q. Let me just clean up one little housekeeping detail and that's all. Did you in fact prepare this chart that's been offered as Exhibit 195? A. Yes, I prepared that.

Q. What were your data sources for preparing that chart? **[494]** A. All of this data came from the exhibits that have been entered showing data that was supplied by, in response to a subpoenae by the banks in the area.

Mr. Sims: I have no further questions, Your Honor.

Recross-examination

By Mr. Doyle

Q. Doctor, based on your testimony with regard to the zip codes, I take it that if you find two banks drawing a significant number of customers from one zip code area, you conclude that they are competing for those customers; is that correct? A. They may be. I would assume that was worthy of further investigation if I found that to be the case, yes.

Q. All right, sir. Now, if customers from that same area can go to two complimentary banks or two banks and use either of those banks for their banking services, to cash checks and make deposits, those banks could well be regarded as complimentative rather than competitive? A. Complimentary banks?

Q. Yes. A. The case of one banking firm with two offices, yes, I would say that certainly would be the case.

Q. If the customer, therefore, can transact **[495]** business at either of those two offices, they could be complimenting rather than competing with each other? A. Certainly, yes.

Q. Now, if the question is whether a bank is an effective competitor or whether it's effectively competing, then you would agree, would you not, that Peachtree Bank & Trust is not presently competing in South DeKalb County? A. No, I wouldn't. I wouldn't conclude that. I would say that their probability of drawing customers from South DeKalb would be very, very slight, but that Peachtree Bank & Trust would not be insulated from what happens in Decatur, for example,

in banking markets in Decatur. For example, if those banks in Decatur should take some strong pro-competitive action policy that appealed to their customers, I don't think that Peachtree Bank & Trust, even though it doesn't draw from exactly the same zip code, that it would be safe for that bank to ignore what is happening down in Decatur.

Q. All right, sir. Now, Peachtree Bank & Trust Company, taking that example, in fact, has an insignificant number of customers from that part of South DeKalb County, south of Decatur; correct? A. Yes, I doubt they have more than ten.

Q. Ten or fifteen customers from down that way and banks, after all, do compete for customers; don't they? **[496]** A. Yes, some banks do.

The Court: Professor, when you consider your transmittal effect or the three-circle effect, lines have nothing to do with that effect, do they?

The Witness: No, sir, the significance of county lines, we don't consider that county lines are significant because it's a county line, but because of the branch banking laws in this state right now.

The Court: They have no transmittal effects. It doesn't effect the transmittal effect?

The Witness: Only to the extent——

The Court: It permits the location of the bank within the area, within one of the three circles?

The Witness: Right, a bank in DeKalb, if the customer started moving into Fulton, the bank in DeKalb could not follow those customers by locating branches over in Fulton County.

The Court: Well, now, you were making the circles, zip codes, as I understand it.

The Witness: Well, that is actually my, in my second affidavit I drew circles which were an abstract thing really, not related to zip codes. I used zip codes in this case because that's the form **[497]** in which the data came to me.

The Court: Do the zip codes themselves have anything to do with the transmittal effect?

The Witness: No, sir, I don't think so. I don't think the zip code lines erect any barrier whatsoever.

The Court: With respect to transmittal effect, the only real inquiry is what banks happen to be in the location and where are their customers and what are their effects as to, the effect as to their practices on their customers; is it not?

The Witness: Well, a little bit more than that. I think it's not only what banks are in the area but what banks do they directly compete with because there may be two banks, let's say, in zip code 30030, one at the lower end of the zip code, another at the higher end of the zip code, they would probably be banks competing with each other if there are not too—directly for the same specific customers—if they are not too far apart. Also, the zip code below that, the next southern zip code would be important to the bank at the southern end of the county. Therefore, if that southern bank took some procompetitive action, the bank in the middle would probably respond, the bank at the **[498]** southern end of zip code 30030, would respond, when it responded, it would be unsafe for the bank at the northern end of that zip code to ignore it. So, in effect, you have got banks at the top of 30030 and a bank at the south of 30030, influencing each other's behavior even though they don't compete directly for some customers.

[499] The Court: All right, I understand your principle as a hypothetical principle.

A. Yes.

The Court: Have you examined it in practicality apart from the zip-code analysis which you have just given us? For example, if I were to ask you if there is any transmittal effect between the C&S Bank in Sandy Springs and whatever the bank is in Palmetto, Georgia, could you give me an answer?

A. I would guess that that would be slow, but, no, I can't give you a quantitative answer. My guess would be that that would be a very slowly transmitted effect because of the great amount of open space between Palmetto and the metro part of Fulton County.

Q. What do you mean by open space, people live there? A. Yeah, but relative to the Palmetto area, it is quite sparsely populated and it is quite a drive up the expressway from Palmetto to the—what I have been calling the metropolitan area, for want of a better word.

Palmetto, I consider one of those more—one of those towns similar to Alpharetta, for example.

The Court: Oh, I picked it because it is on the southern part of Fulton County.

[500] A. Yes.

The Court: But I was using it to test the validity of the use of c[illegible]ty lines.

A. Oh, yes, sir, I think if you would cut off that southwestern piece of Fulton County that you would have been left with a market that was no less valid than the one you started with, and probably would be more valid than the market——

The Court: What do you mean by southwestern corner?

A. Well, where Fulton County juts down into the—in the southwesterly direction; I don't know if you pick a line, say, at the corner of there, at the corner of Fulton County, and that is Clayton County below it, and just draw a line northwest across there that that would—that would leave you with

a market that was no less realistic than a market defined as the whole county, probably more realistic, in fact.

The Court: How about the northern bulge of Fulton County, what is that, old Milton County?

A. Yes, sir, that's right. It was at the river, the line was at the river until, I believe, it was 1940——

The Court: How does that fit in **[501]** with your market?

A. I think you could possibly cut off a significant piece of North Fulton County; look, for example, at that piece that juts out to the east from what looks like a straight line, at the northeast or top of Fulton County. You could probably cut that right off and not damage the market that you have, and have an equally realistic market. You might be able to cut off that crown of Fulton County up there and not damage the market, or possibly even more of it.

I think it is really just impossible. It would be a pure chance event if you found any county lines anyplace in the country that corresponded precisely to geographic markets.

The Court: All right. You may step down.

Mr. Kinkaid: Your Honor, except for one very small detail, which we raised yesterday, that is, the depositions, we are finished. Five of the depositions I understand—now, there's one that still hasn't arrived, I guess, from the clerk's office.

The Court: All right.

Mr. Kinkaid: But, it is our understanding——

[502] The Court: Identify them and they will be admitted.

Mr. Kinkaid: The plaintiff rests, Your Honor.

The Court: You want to identify the depositions?

Mr. Kinkaid: Yes, sir.

The Court: I don't imagine there's any question about it, but you can identify them now, if you wish.

Mr. Kinkaid: We have already designated them in a document.

The Court: At the end of your list of witnesses, as I understand it, you have the depositions.

The Clerk: I have them in order except for Mr. Morris Pierce.

The Court: Well, Mr. Pierce will be admitted on the same basis, his deposition, when it arrives.

Mr. Kinkaid: Yes, Your Honor. We have a document that we have submitted entitled "Plaintiff's Designation of Deposition Testimony", and this lists the various depositions which we took, and they **[503]** are listed alphabetically, and I would propose that we just simply begin the first one, the deposition of James H. Aldredge, as Government's Exhibit 196, and simply give consecutive numbers to the others, and that would take care of it.

The Court: All right. The clerk will do so, and they will be received.

The Clerk: Government's Exhibit No. 196 through 215, then.

The Court: All right. The Government rests. Is the defendant ready?

Mr. Hodgson: Yes, Your Honor.

If Your Honor please, on Monday we reserved a privilege of making an abbreviated opening statement in light of the issues that have been a little more sharply drawn through the trial briefs that were filed, and I would like to take a few moments at this time to emphasize these points.

The Court: All right, sir.

Mr. Hodgson: The things that seem significant to us at this time, Judge, are these: the Government's brief ignores our **[504]** charge or our assertion that these five small banks are, in name and in fact, Citizens and Southern banks; that they have been from the time that they were organized in the eyes of their shareholders, the public, the regulators, their competitors and their own officers and directors. Not only does the Government's brief ignore these as C&S banks to the pointed end of describing them without the name C&S, it also asserts that they are, in fact, vigorous and significant competition to the Citizens & Southern National Bank, ignoring the significant relationships we claim, and doing so with an emphasis on the legalities of officer and director responsibilities to their various corporations. Ignoring the areas of voluntary control that do exist in this case, and have from the beginning.

Now, that is one major facet of the brief that we intend to focus on as we introduce our evidence. And we will do this by emphasizing the history, and showing these are C&S banks and that they are not competitors in the sense of the anti-trust laws. Those laws have been **[505]** observed, and that they have competed among one another as friendly branches, but that to the public and to themselves they have been C&S banks.

The next significant feature of the Government's brief, it seems to us, is that it ignores the question of whether or not the mergers will reduce competition but argues in terms of what would be the effects of nonmergers. That is an enforced separation of relationships that have been voluntarily entered into and enjoyed with the full expectation that mergers will occur.

Again, the Government's brief ignores the history that led to these relationships, ignores the pro-competitive aspects at all times, not only of the attitude of the Citizens & Southern system generally, but in these particular instances, better to serve the conveniences and needs of the communities. That they are not anti-competitive, they are not merely not anti-competitive,

they are indeed pro-competitive factors. All of this we expect to do in the light of the constantly changing laws in these areas, which Your Honor **[506]** has come to recognize as being numerous and confusing on occasion, but particularly we will ask that Your Honor bear in mind as, the evidence unfolds, the facts that in the Atlanta market no C&S bank, no C&S National bank could branch at all until 1960, and that after 1956 it could not engage in holding-company expansion previously permitted by the ownership of more than 15% of the voting stock of any bank. And, after 1960, by the ownership of more than 5% of the voting shares of any bank.

We ask Your Honor to bear in mind that it wasn't until 1963, less than ten years ago, that the Philadelphia decision came down for the first time, and to the surprise of many, applying the standards of Clayton 7 to bank mergers, and it was only the next year that the Lexington case applied, the Section 1 of the Sherman Act of these mergers, and it's only been six years that the Congress decided to immunize those relationships that had been taking place before July 1, of 1966 against the impetus of these laws, against those backgrounds.

Your Honor, we will present the testimony **[507]** of these classifications of witnesses: four senior executive officers of the National Bank & Holding Company; Mr. Lane, who through most of this period was president of the National Bank.

Mr. Howard Starks, who is in our marketing department, in our branch supervision department, and who was directly related, in large degree, to many of these activities. The current president of our holding company, Mr. Joe Hall, who has been in the controller's office of the National Bank and an officer of the holding company right along.

And, Mr. Dan Handley, who currently is particularly in charge of branch supervision.

We expect to follow these four major witnesses with representatives of regulators who have been kept fully apprised of

our activities, of our competitors, seeking to show that they recognize each of these banks as a C&S bank; by our customers who traded with us for that purpose; by the presidents and selected directors of each of the six banks, to show their attitude.

Dr. Nevins Baxter, our economist who **[508]** filed our economic report, will be our last witness. We trust and believe that when our evidence is fully in, Your Honor will agree that the decision that the Federal Deposit Insurance Corporation, undoubtedly the toughest of the bank regulatory agencies on these issues today, was right when after a full year's study and examination of these separate facts which the Court is obliged to examine de novo, was right when it approved these mergers.

I would like to call Mr. Lane, please.